

**SUBCHAPTER K. CONTINUING EDUCATION, [AND] ADJUSTER  
PRELICENSING EDUCATION PROGRAMS, AND LONG-TERM CARE  
PARTNERSHIP CERTIFICATION COURSES**

**28 TAC §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012,  
19.1014, 19.1022, and 19.1023**

**1. INTRODUCTION.** The Texas Department of Insurance proposes amendments to §§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011, 19.1012, and 19.1014, and new §§19.1022 and 19.1023, concerning long-term care partnership certification and continuing education courses and licensee training requirements. These proposed amended and new sections are necessary to implement SB 22, enacted by the 80th Legislature, Regular Session, effective March 1, 2008, which amends the Human Resources Code Chapter 32 and the Insurance Code Chapter 1651 to establish a long-term care partnership program in Texas.

SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how they relate to other public and private coverage of long-term care. SB 22 requires the Texas Health and Human Services Commission (HHSC) to provide information and technical assistance to the Department regarding its role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives the required training and demonstrates evidence of an understanding of these plans. Additionally, SB 22 specifically requires such training to satisfy the training requirements imposed under the provisions

governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021 of the DRA amends §1917(b) of the Social Security Act (42 U.S.C. §1396(p)(b)) to provide for the expansion of a qualified state long-term care insurance partnership program. In order to qualify as a state long-term care insurance partnership program, a state must submit a state plan amendment to the U.S. Department of Health and Human Services for approval that, at a minimum, meets the required elements set out in §6021(a)(1)(A)(iii) of the DRA. Specifically, §6021(a)(1)(A)(iii)(V) requires the state Medicaid agency to provide information and technical assistance to the state insurance department on its role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The DRA does not prescribe any further training requirements, nor does it elaborate on the content of, or the procedures for, meeting the prescribed training requirements. Similarly, while SB 22 incorporates the training requirements of the DRA into its own provisions, it also does not elaborate on the elements necessary to satisfy the prescribed training requirements.

Section 6021(a)(1)(A)(iii)(III) of the DRA requires a qualified state long-term care partnership policy to meet several of the requirements of the Long-Term Care Insurance Model Act (Model Act) and the Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of

Insurance Commissioners (NAIC). While the NAIC Model Act and the NAIC Model Regulation both prescribe requirements related to long-term care insurance policies, only the NAIC Model Act contains specific licensee training requirements related to the sale, solicitation, and negotiation of long-term care insurance. Neither the DRA nor SB 22 specifically requires the Department to consider the NAIC Model Act in adopting long-term care partnership training requirements. Nevertheless, the Department has determined that it is important that the Department consider the provisions of the NAIC Model Act in formulating its long-term care partnership training requirements for several reasons. First, modeling the Department's long-term care partnership training requirements on the long-term care training requirements of the NAIC Model Act will help ensure consistent regulation of the long-term care partnership market in Texas. Each provision of the NAIC Model Act, including the requirements specifically related to long-term care insurance policies and long-term care insurance training, was intended to function together to form a cohesive set of regulations for the long-term care market. SB 22 requires the Department to adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the DRA. One of the requirements under the DRA is that a long-term care partnership policy meet several of the long-term care insurance policy requirements of the NAIC Model Act and the NAIC Model Regulation. Because a long-term care partnership policy must meet several of

the long-term care insurance policy requirements of the NAIC Model Act, it is especially important that the long-term care partnership training regulations adopted by the Department operate compatibly with those requirements. Modeling the Department's long-term care partnership training requirements on the training requirements of the NAIC Model Act will ensure such compatibility and consistency. This is because, like the Department's long-term care partnership insurance policy requirements, the Department's long-term care partnership training regulations will also be based on the framework of the NAIC Model Act. Because all the provisions of the NAIC Model Act were purposefully written to function together, regulations modeled after those provisions should also function together, as well. Second, both long-term care insurance and long-term care partnership insurance function in a similar capacity. Because of the similarities between the two insurance products, a licensee should develop an understanding of long-term care insurance before mastering the more complex aspects of long-term care partnership insurance, such as asset disregard and Medicaid eligibility requirements. The training requirements of the NAIC Model Act are designed to focus on the core concepts and requirements of long-term care insurance. Including those provisions in the Department's long-term care partnership training requirements should first assist licensees in acquiring an adequate understanding of the basic concepts and requirements of long-term care insurance. Licensees should then be able to supplement this foundation with an understanding of the more complex requirements of long-term care partnership insurance. Third, the provisions of the NAIC Model Act facilitate

flexibility and innovation in the development of long-term care insurance coverage. Thus, the provisions of the NAIC Model Act provide for consideration of state long-term care insurance partnership programs where such programs have been approved and are operational. For example, the NAIC Model Act requires long-term care insurance training to include topics related to long-term care insurance, long-term care services, and if applicable, qualified state long-term care insurance partnership programs. Including the relevant training requirements of the NAIC Model Act that specifically relate to long-term care partnership policies in the Department's long-term care partnership training requirements will also assist licensees in developing an adequate understanding of long-term care partnership insurance. Lastly, the provisions of the NAIC Model Act provide uniform, standardized training requirements that facilitate reciprocity among states implementing long-term care partnership programs. The Department has learned that, as of October 1, 2007, 10 states implementing a long-term care partnership program have received approval for their state plan amendments. Those states are Colorado, Florida, Georgia, Idaho, Kansas, Minnesota, Nebraska, North and South Dakota, and Virginia. Six of those 10 states, Florida, Idaho, Minnesota, Nebraska, and North and South Dakota, have incorporated the majority of the training provisions of the NAIC Model Act into their long-term care partnership training requirements, with only minor modifications. The remaining four states are incorporating provisions based upon the content of the training provisions of the NAIC Model Act in their long-term care partnership training requirements, but with more significant

modifications. The Department has also been informed that six additional states, Iowa, Maine, Missouri, Oregon, Pennsylvania, and Rhode Island, have issued long-term care partnership training requirements in advance of obtaining approval of their state plan amendments. Of these six states, four plan to adopt the majority of the training requirements in the NAIC Model Act. Those states are Maine, Missouri, Oregon, and Rhode Island. The remaining two states, Iowa and Pennsylvania, plan to adopt training requirements that contain more significant modifications. Of the 16 states implementing a long-term care partnership program, 10 states are incorporating the training requirements of the NAIC Model Act into their individual state training requirements, with only minor modifications. The Department, too, is proposing long-term care partnership training requirements that incorporate the majority of the provisions of the NAIC Model Act, which will assist in the reciprocal treatment of long-term care partnership training requirements among other partnership states.

The training framework of the NAIC Model Act is comprised of a one-time training course that an individual must complete in order to sell, solicit, or negotiate long-term care insurance, and where applicable, long-term care partnership insurance. The individual must also be licensed as an insurance producer for accident and health or sickness or other lines of authority, as applicable. The NAIC Model Act also provides that an individual already licensed and selling, soliciting, or negotiating long-term care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training

course within one year from the effective date of the applicable enacting legislation. In addition to the one-time training course, the NAIC Model Act requires an individual who sells, solicits, or negotiates long-term care insurance, and where applicable, long-term care partnership insurance, to complete ongoing training every 24 months thereafter. The one-time training course must be no less than eight hours in length, and the ongoing training must be no less than four hours every 24 months. The NAIC Model Act also allows both the one-time training course and the ongoing training to be approved for continuing education credit. The NAIC Model Act also requires specific topics related to long-term care insurance, long-term care services, and, where applicable, qualified long-term care insurance partnership programs, to be included in the one-time training course and the ongoing training. The NAIC Model Act prohibits any training from including insurer or company product specific information or materials. Additionally, the NAIC Model Act requires insurers to obtain verification that an individual has received the appropriate training, to maintain records of such verification, and to make such verification available to the Commissioner upon request. Lastly, the NAIC Model Act provides for reciprocity among states with regard to the training requirements.

As required by the DRA and SB 22, the Department met with this state's Medicaid agency, the Texas Health and Human Services Commission (HHSC), in August, 2007, and again in September, 2007, to discuss the Department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates

evidence of an understanding of these plans. The Department and HHSC staff generally discussed the training provisions of the NAIC Model Act; the Department's existing process for certifying long-term care insurance continuing education courses and providers, whether long-term care partnership certification and continuing education courses and providers could be successfully integrated into the Department's existing processes; insurer, licensee, and provider reporting requirements; and reciprocity among the states with respect to long-term care partnership training requirements. Additionally, the Department and HHSC staff identified elements unique to long-term care partnership insurance that should be included in the Department's proposed training requirements. As a result of HHSC's recommendations and technical assistance, the Department has incorporated two additional elements, Medicaid eligibility criteria and asset disregard, into the proposed subject matter that must be included in a Department certified long-term care partnership certification course. The proposal also provides a web site address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program, including a section of the website entitled "Resource for Agent Training: Texas Medicaid Eligibility and Long-Term Care Partnership" prepared by HHSC that provides guidance on related Medicaid eligibility issues. The information and resource material provided on this website will be maintained and updated by DADS, as necessary.

The majority of the requirements of the NAIC Model Act pertaining to long-term care insurance have been incorporated into the Department's proposed amendments and new sections, with only a few necessary modifications. First, the Model Act addresses training requirements related to the sale, solicitation, or negotiation of long-term care insurance, and where applicable, long-term care partnership insurance. However, the proposed amendments and new sections apply only to long-term care partnership insurance training requirements. This change is necessary to implement the requirements of SB 22 and the DRA, which specifically relate to long-term care partnership insurance. Second, the proposed amendments and new sections do not address the use of insurer or company specific products, including marketing or sales information and materials, during training courses because §19.1008 of this title (relating to Certified Course Advertising, Modification, and Assignment), which is not amended under this proposal, currently contains the Department's prohibitions regarding the use of company logos, references to specific company products, and the presentation of advertising materials during course instruction and examination periods. Therefore, it is not necessary to adopt the provision of the NAIC Model Act addressing the same subject matter for long-term care partnership insurance. Rather, the proposal applies the provisions of §19.1008 to long-term care partnership insurance and training requirements, as necessary. Third, the proposed amendments and new sections slightly deviate from the provisions of the NAIC Model Act with regard to records maintenance and verification requirements. Instead of requiring insurers to maintain verification

that a licensee has successfully completed a long-term care partnership certification or continuing education course, the proposed sections require a licensee and a course provider to maintain records verifying that a licensee completed a Department approved long-term care partnership certification or continuing education course. This requirement serves two purposes. To the extent possible, the Department's proposed sections incorporate the requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee requirements into the existing framework for provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. Because existing Department regulations require licensees and providers to maintain course completion records, it is not necessary for the Department to adopt the provisions of the NAIC Model Act addressing those regulatory areas. Additionally, the Department will separately propose amendments to Chapter 3 Subchapter Y of this title (relating to Standards for Long-term Care Insurance Coverage Under Individual and Group Policies) that will require insurers to maintain records and submit certain documentation to the Department certifying that their appointed licensees have obtained the required long-term care partnership training. Those proposed amendments will be published in a subsequent issue of the *Texas Register*. Fourth, the NAIC Model Act provides that an individual already licensed and selling, soliciting, or negotiating long-term

care insurance on the effective date of the enacting legislation may not continue to sell, solicit, or negotiate long-term care insurance unless the individual has completed a one-time training course within one year from the effective date of the enacting legislation. The proposal differs from this NAIC Model Act provision in two ways. First, the proposal permits individuals already licensed and performing the acts of an agent with regard to a long-term care insurance policy on the effective date of proposed new §19.1022 (relating to Long-Term Care Partnership Certification Course) to perform the acts of an agent with regard to a long-term care partnership insurance policy on the effective date of proposed new §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1, 2009. This modification is necessary for consistency with the other provisions of the proposed amendments and new sections that relate to long-term care partnership insurance. Second, the proposal shortens by approximately 60 days the NAIC allotted time period in which an appropriately licensed individual may sell, solicit, or negotiate long-term care insurance prior to completing a one-time long-term care insurance training course. This modification is necessary to implement the long-term care partnership insurance certification requirements of SB 22. SB 22 requires each long-term care benefit plan issuer that offers a plan under the partnership for long-term care program to certify to the Commissioner that each individual who sells a plan on behalf of the issuer completes training and demonstrates evidence of an understanding of these plans and how these plans relate to other public and private coverage of

long-term care. This provision of SB 22 will be implemented in Department rules relating to standards for long-term care insurance coverage under individual and group policies that will be proposed separately from this proposal. These rules will propose that the SB 22 certifications be submitted periodically to the Commissioner, beginning in January 2009. If the Department adopted the provision of the NAIC Model Act without modification of the allotted time period, individuals already licensed and selling, soliciting, or negotiating long-term care insurance on March 1, 2008, could not sell, solicit, or negotiate long-term care partnership insurance unless the individual completed a one-time training course within one year from March 1, 2008, which could be approximately 60 days after the first certifications would be due to the Commissioner under the separately proposed Department rules. In those cases, the certifications submitted to the Commissioner would not meet the requirements of SB 22 or Department regulation. This is because not all individuals selling, soliciting, or negotiating long-term care partnership insurance on behalf of long-term care benefit plan issuers would have completed the required training by the time the first certifications were due. By providing the January 1, 2009 deadline in this proposal in lieu of the allotted deadline in the NAIC Model Act, long-term care benefit plan issuers will be able to certify to the Commissioner, in January 2009, that all individuals performing the acts of an agent with regard to a long-term care partnership insurance policy on their behalf have completed the required training. Lastly, while the proposal includes the three agent activities enumerated in the NAIC Model Act, the substantive requirements of proposed new §§19.1022 and

19.1023 are based on the Insurance Code §4001.051 051 (relating to acts constituting acting as an agent), which specifies agent activities that are in addition to those enumerated in the NAIC Model Act. This modification is necessary to accurately incorporate activities under Texas law that an individual may take with regard to a long-term care partnership insurance policy that may qualify as the act of an agent and, therefore, subject the individual to Department regulation. Aside from these necessary modifications of the NAIC Model Act provisions, the remaining requirements of the NAIC Model Act are incorporated into the proposed amendments and new sections without substantial change.

In general, and to the extent possible, the proposed amendments incorporate the requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training into existing Department regulations relating to provider registration, instructor, and speaker criteria; course criteria; course certification; submission applications, course expirations, and resubmissions; types of courses; requirements for successful completion of continuing education courses; and forms and fees. For example, the proposed amendments apply the existing provider registration requirements to providers seeking to offer long-term care partnership certification and continuing education courses. Likewise, the proposed amendments also apply the existing requirements related to forms and fees, course criteria, course certification, types of courses, requirements for completion of continuing education courses, and record maintenance requirements related to continuing education courses and adjuster prelicensing

education and instruction to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training. Applying the existing regulations for continuing education courses and adjuster prelicensing education and instruction to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements promotes stability and consistency in Department regulation, reduces additional costs and unnecessary use of resources, and encourages uniform treatment of similar subject matter. The two new proposed sections are necessary to address the requirements that are unique to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements.

**Section-by-Section Overview.** The following is a section-by-section overview of the proposal.

**Subchapter Title.** The proposed amendment to the subchapter title is necessary to more accurately reflect the proposed additional content, which includes requirements related to long-term care partnership certification and continuing education courses and related long-term care partnership licensee training requirements.

**§19.001. General Provisions.** The proposed amendment to §19.1001(a) identifies an additional purpose of the subchapter, which is to specify procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training

requirements, as authorized under the Insurance Code Chapter 1651, Subchapter C, and the Human Resources Code Chapter 32, Subchapter C.

The proposed amendment to §19.1001(d), relating to provider compliance date, deletes the subsection in its entirety because the subsection is obsolete and no longer functions as it was originally intended. Section 19.1001(d) was originally adopted to be effective January 6, 2003, and Subchapter K was later amended to be effective January 19, 2006. Therefore, the calculation of the date of compliance as provided in §19.1001(d) is no longer applicable.

**§19.1002. Definitions.** The proposed amendments to §19.1002(b) add a new definition of *long-term care partnership insurance policy*. SB 22 requires each individual who sells a long-term care benefit plan under the partnership for long-term care program to complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. The proposed amendment to add a new §19.1002(b)(17) is necessary because proposed new §§19.1022 and 19.1023, which implement SB 22 by prescribing requirements for long-term care partnership certification and continuing education courses and related long-term care partnership licensee training, include references to long-term care partnership insurance policies. The proposed amendments to §19.1002(b) also amend the definition of *provider* to require registration with the Department in order to offer long-term care partnership certification courses. The proposed amendments to §19.1002(b) also amend the definition of *provider registration* to authorize utilization of the Department's process for providers seeking

permission to offer long-term care partnership certification courses to licensees. Lastly, the proposed amendments to §19.1002(b) re-designate the remaining definitions accordingly.

**§19.1005. Provider Registration, Instructor, and Speaker Criteria.**

The proposed amendment to §19.1005(a) is necessary to authorize a provider applicant to seek initial registration or renewal registration from the Department to be a long-term care partnership certification course provider in the same manner that a provider applicant must seek initial registration or renewal registration from the Department to be a continuing education provider or an adjuster prelicensing education provider. The proposed amendment to §19.1005(b) provides necessary consistency with the proposed amendment to §19.1005(a) by authorizing providers to certify and offer long-term care partnership certification courses in the same manner as, and in addition to, continuing education courses and adjuster prelicensing education courses. Lastly, the proposed amendment to §19.1005(f) provides necessary consistency with the proposed amendment to §19.1005(a) by prohibiting providers from using speakers in conjunction with long-term care partnership certification courses, unless the speaker qualifies as an instructor. Providers using speakers in conjunction with adjuster prelicensing courses and other continuing education courses that are not one-time event continuing education courses are subject to the same prohibition.

**§19.1006. Course Criteria.** Proposed new §19.1006(c) is necessary to prescribe the general course criteria for a Department certified long-term care

partnership certification course. Specifically, proposed new §19.1006(c) requires that the course content of a Department certified long-term care partnership certification course enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in proposed new §19.1022 (relating to Long-Term Care Partnership Certification Course). Proposed new §19.1006(c) also makes clear that, unless specifically stated otherwise, each provision of Subchapter K applies equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes. The “unless specifically stated otherwise” provision of proposed new §19.1006(c) is necessary to provide the regulatory framework for long-term care partnership certification and long-term care partnership continuing education course requirements by incorporating such requirements into the existing regulatory framework of Subchapter K. Subchapter K currently provides such requirements for other Department licensees, including provider registration requirements, instructor, and speaker criteria requirements; course criteria requirements; course certification; submission applications, course expirations, and resubmissions requirements; types of courses; requirements for successful completion of continuing education courses; and forms and fees. The “unless specifically stated otherwise” provision is proposed in lieu of amending all of the applicable sections of Subchapter K to include specific references to long-term care partnership certification and continuing education course requirements. Therefore, under the proposal, unless specifically stated otherwise, the provisions of Subchapter K that apply to

courses certified for continuing education purposes, including the proposed amendments as well as the provisions of Subchapter K that are not amended under this proposal, also apply to courses certified for long-term care partnership certification and long-term care partnership continuing education purposes. Lastly, the proposed amendments to §19.1006 re-designate the remaining subsections accordingly.

**§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions.** The proposed amendments to §19.1007(a) are necessary for consistency among course certification applications submitted by providers. The proposed amendment to §19.1007(a) requires providers to submit long-term care partnership certification course applications to the Department in the same manner as providers are required to submit course certification applications for Department licensee continuing education courses and adjuster prelicensing training and education courses. Specifically, the proposed amendment to §19.1007(a)(7) requires a provider to include a statement identifying that a course is for long-term care partnership certification, along with the TDI license number and the name of the student completing the course, in the sample certificate of completion that is submitted to the Department as part of a course certification application. The proposed amendment to §19.1007(a)(8) also requires a provider to include a statement in the submitted course certification application that the course is intended for long-term care partnership certification and whether the course is primarily intended to be open to all licensees or has a restricted enrollment.

**§19.1009. Types of Courses.** Proposed new §19.1009(c) requires a provider to offer a long-term care partnership certification course as a complete course of study that meets the requirements of proposed new §19.1022. Proposed new §19.1022 prescribes the requirements for a long-term care partnership certification course, including course length and course content. Proposed new §19.1009(c) and proposed new §19.1022 require a provider to offer a long-term care partnership certification course only as a one-time, eight-hour unit. While a long-term care partnership certification course may be longer than eight hours in length, it may only be offered as a one-time course. Thus, under these proposed provisions, a provider could not offer or combine several, separate long-term care partnership certification courses in order to satisfy the one-time, eight-hour certification course requirement. The requirement that a long-term care partnership certification course must be provided to licensees in one sitting and as a one-time course is necessary to ensure consistency among provider materials and course content and to provide the best opportunity for meaningful feedback and interaction between licensees and course instructors. Piecemeal completion of a long-term care partnership certification course could potentially result in confusing or inconsistent course instruction, confusing or inconsistent teaching materials, and ineffective or inefficient participation by licensees. Additionally, proposed new §19.1009(c) authorizes a provider to offer long-term care partnership certification courses as classroom, classroom equivalent, or self-study instruction. This option allows a licensee optimum scheduling flexibility because a licensee may choose the most convenient time

and method for completing the course based on his or her personal schedule and preferences. Overall, proposed new §19.1009(c) is consistent with and similar to the requirements related to Department licensee continuing education and adjuster prelicensing courses under this section. Lastly, the proposed amendments to §19.1009 re-designate the remaining subsections accordingly.

**§19.1011. Requirements for Successful Completion of Continuing Education Courses.** The proposed amendment to §19.1011(a) requires providers to use actual attendance rosters to certify completion of a certified classroom long-term care partnership certification course. Additionally, the proposed amendment to §19.1011(a) authorizes providers to establish assessment measurements or additional completion requirements for successful completion of a classroom long-term care partnership certification course, provided that the requirements are fully disclosed in the registration materials before a licensee purchases the course. These requirements are consistent with the existing requirements related to completion certification for Department licensee classroom or one-time-event continuing education courses. The proposed amendment to §19.1011(b) requires providers to use periodic interactive inquiries to determine completion of a certified classroom equivalent long-term care partnership certification course. The proposal also requires licensees to complete all inquiry sections with a minimum score of at least 70 percent for each section. These requirements are consistent with the existing requirements related to completion certification for classroom equivalent continuing education courses. Lastly, the proposed amendment to §19.1011(c)

requires providers to use a written, online, or computer-based final examination as the means of completion for all certified self-study long-term care partnership certification courses. The proposal also includes requirements relating to the content of course records. These requirements are also consistent with the existing requirements related to completion certification for Department licensee self-study continuing education courses.

**§19.1012. Forms and Fees.** The proposed amendments to §19.1012 prescribe the same fees for administering the long-term care partnership certification program that are required for continuing education course certification. As provided under existing §19.1012(b), these fees are nonrefundable and apply unless the Department contracts with a third party to provide continuing education services. The proposed fee amounts are provider original registration \$50 and provider renewal \$50; continuing education course certification initial submission \$10 for each hour of course credit requested on the application; resubmission, \$10 for each hour of course credit requested on the application; and course assignment, \$50 per assignment.

**§19.1014. Provider Compliance Records.** The proposed amendment to §19.1014(a) requires providers to maintain long-term care partnership certification records in the same manner and for the same length of time as continuing education and adjuster prelicensing education records. If long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the proposed amendment to §19.1014(e) grants providers 30 days from the date of notice to correct any

discrepancies or to submit new documentation. The proposed amendment to §19.1014(e) also grants the same amount of time to providers with regard to adjuster prelicensing records. These proposed amendments are necessary to provide consistency with the existing provider compliance records provisions related to Department licensee continuing education records.

**§19.1022. Long-Term Care Partnership Certification Course.**

Proposed new §19.1022 prescribes the requirements for long-term care partnership certification courses and related long-term care partnership licensee training requirements. First, proposed new §19.1022(a) prohibits an individual from performing any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy unless the licensee holds a current Life, Accident, and Health license issued by the Department and has completed a Department certified long-term care partnership certification course meeting the requirements of the subchapter. Proposed new §19.1022(b) provides that an individual that holds a current Life, Accident, and Health license issued by the Department and is performing any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of proposed new §19.1022 may perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy on the effective date of proposed new §19.1022, provided that the individual completes a long-term care partnership certification course meeting the requirements of the subchapter no later than January 1,

2009. Proposed new §19.1022(c) establishes the standards for a Department certified long-term care partnership certification course. Under this proposed new subsection, a Department certified long-term care partnership certification course must be at least eight hours in length, must cover the subjects specifically described in proposed new §19.1022(g), and must be submitted to the Department for approval in compliance with the requirements of §19.1007 of Subchapter K (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions). Proposed new §19.1022(d) permits a licensee to count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of Subchapter K (relating to Licensee Requirements). Additionally, proposed new §19.1022(d) requires a licensee choosing to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 to comply with §19.1013 of Subchapter K (relating to Licensee Record Maintenance). Proposed new §19.1022(e) requires a licensee to maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Additionally, proposed new §19.1022(e) requires a licensee to provide proof of completion of a long-term care partnership certification course to the Department upon request. Proposed new §19.1022(f) sets forth the requirements for a provider issued completion certificate for a long-term care partnership certification course. Specifically, proposed new §19.1022(f) requires a provider issued completion certificate for a long-term care partnership certification course to meet the requirements of

§19.1011 of Subchapter K (relating to Requirements for Successful Completion of Continuing Education Courses). Proposed new §19.1022(g) describes the course subjects that a long-term care partnership certification course outline must address, including (i) long-term care insurance; (ii) long-term care services and providers; (iii) qualified state long-term care insurance partnership programs, which must include state and federal requirements; the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; available long-term care services and providers and changes or improvements in long-term care services or providers; (iv) alternatives to the purchase of private long-term care insurance; (v) the effect of inflation on benefits and the importance of inflation protection; (vi) consumer suitability standards and guidelines; (vii) Medicaid eligibility criteria and requirements, including financial eligibility criteria and requirements; and (viii) asset disregard under qualified state long-term care partnership programs, including the interaction between asset disregard and Medicaid rules. Proposed new §19.1022(h) makes clear that providers must meet all of the requirements of Subchapter K before offering a long-term care partnership certification course to licensees. Proposed new §§19.1022(i) and §19.1022(j) address reciprocity among the states with regard to long-term care partnership training requirements. Proposed new §19.1022(i) specifies the conditions under which a non-resident licensee is not required to complete a long-term care partnership certification course required by the subchapter. Specifically, under the provisions of proposed new §19.1022(i), a non-resident

licensee is not required to complete a long-term care partnership certification course required by the subchapter if the non-resident licensee holds a comparative, current license issued by his or her home state; the non-resident licensee's home state qualifies as a long-term care insurance partnership state; and upon Department request, both the insurer who appointed the non-resident licensee and the non-resident licensee are able to provide proof of the non-resident's completion of a long-term care partnership certification course in the non-resident licensee's home state with requirements substantially similar to those of the proposed new §19.1022. Proposed new §19.1022(j) specifies the conditions under which a non-resident licensee whose home state does not qualify as a long-term care insurance partnership state may comply with the requirements of proposed new §19.1022. Proposed new §19.1022(j) requires a non-resident licensee in such a situation to either complete a Department certified long-term care partnership certification course in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of proposed new §19.1022(i). Proposed new §19.1022(k) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 of Subchapter K (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the long-term care partnership certification course and related licensee training requirements of proposed new §19.1022. Neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements. The Department's

proposed amendments and new sections have the same framework as the NAIC Model Act, which requires individuals to complete a one-time, eight-hour long-term care partnership certification course. The NAIC Model Act also does not exempt any individuals from this requirement. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete the long-term care partnership certification course required under proposed new §19.1022, regardless of their exemption status under §19.1004. Lastly, proposed new §19.1022(l) provides a website address maintained by the Texas Department of Aging and Disability Services (DADS), where providers and licensees may obtain additional information and resource material regarding the long-term care partnership program.

**§19.1023. Long-Term Care Partnership Continuing Education.**

Proposed new §19.1023 prescribes the requirements for long-term care ongoing training, which the Department is proposing to require in the form of continuing education. Proposed new §19.1023 requires the long-term care partnership ongoing training requirements of the NAIC Model Act in the form of continuing education because it is beneficial to both the Department and to licensees to do so. First, requiring the ongoing training in the form of continuing education is consistent with the provisions of the NAIC Model Act, which provide that long-term care partnership ongoing training should be certified as continuing

education. Second, by incorporating long-term care partnership ongoing training into the existing continuing education regulatory framework, the Department will be able to conserve resources by utilizing existing procedures and systems to process long-term care partnership continuing education course and provider registrations and certification applications. Lastly, licensees will also benefit from this approach because they may apply the completion of long-term care partnership ongoing training requirements towards their Department licensee continuing education requirements. Proposed new §19.1023 also generally sets forth long-term care partnership licensee training requirements. Proposed new §19.1023(a) specifies how often a licensee must complete the required long-term care partnership continuing education requirements and how many hours of long-term care partnership continuing education a licensee must complete. Specifically, under proposed new §19.1023(a), in each reporting period following the reporting period in which a licensee completed a long-term care partnership certification course, a licensee must complete at least four hours of Department certified continuing education, during each reporting period, as part of the licensee's continuing education requirements prescribed in §19.1003. Proposed new §19.1023(b) requires the continuing education hours required under proposed new §19.1023(a) to comply with the course criteria in §19.1006 of Subchapter K (relating to Course Criteria) and to enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in proposed new §19.1022. Proposed new §19.1023(c) makes clear that providers must meet all of the requirements of Subchapter K

before offering a long-term care partnership continuing education course to licensees. Proposed new §19.1023(d) specifies the conditions under which a non-resident licensee is not required to complete long-term care partnership continuing education as required by the subchapter. Under the provisions of proposed new §19.1023(d), a non-resident licensee is not required to complete four hours of long-term care partnership continuing education if the non-resident licensee is in compliance with the long-term care partnership continuing education requirements of his or her home state and if his or her home state qualifies as a long-term care partnership insurance state. Proposed new §19.1023(e) provides the conditions under which a non-resident licensee may comply with the requirements of the subchapter if his or her home state does not qualify as a long-term care insurance partnership state. Specifically, proposed new §19.1023(e) requires a non-resident licensee in such a situation to either complete four hours of Department certified long-term care partnership continuing education in this state that meets the requirements of the subchapter or designate a home state that qualifies as a long-term care partnership insurance state and meet the requirements of proposed new §19.1023(d). Lastly, proposed new §19.1023(f) makes clear that licensees that may be exempt from continuing education requirements provided under §19.1004 are not exempt from the ongoing training requirements of proposed new §19.1023, which the Department is requiring in the form of continuing education. As explained previously, neither SB 22 nor the DRA exempts any individuals from the long-term care partnership training requirements, including the ongoing training

requirements. The Department's proposed amendments and new sections follow the framework of the NAIC Model Act that requires licensees to complete no less than four hours of long-term care partnership ongoing training. The NAIC Model Act also does not exempt any individuals from the long-term care partnership ongoing training requirements. Because neither the DRA, SB 22, nor the NAIC Model Act provide any individuals any exemptions from the long-term care partnership training requirements, individuals intending to perform any action constituting the act of an agent pursuant to the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must complete long-term care partnership continuing education under proposed new §19.1023, regardless of their exemption status under §19.1004.

**2. FISCAL NOTE.** Matt Ray, Deputy Commissioner for the Licensing Program, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there may be an increase in state revenue ranging from \$2,820 to \$7,460 annually as a result of the enforcement or administration of these proposed amendments and new sections. These estimates are based on the following factors. Currently, 58 providers are registered with the Department and offer Department certified long-term care insurance continuing education courses. Currently, there are 103 Department certified long-term care insurance continuing education courses. Fifty of those courses are open to the public. Fifty-three of those courses are not open to the public and are only made available to specified invitees by specific course

providers. In the past two years, the Department has certified 59 new long-term care insurance continuing education courses. Based on these figures, the Department anticipates processing very few new course provider applications specifically related to long-term care partnership certification and continuing education courses. Based on the number of registered providers currently offering long-term care insurance continuing education courses and the number of Department certified long-term care continuing education courses, the Department expects that most of the providers interested in offering courses related to long-term care insurance, including long-term care partnership insurance, are already registered with the Department and are already offering Department certified courses. However, there may be a small number of providers that choose to register with the Department to offer long-term care partnership insurance certification or continuing education courses. In that event, the Department estimates that it will annually process no more than 10 new course provider applications for long-term care partnership certification and continuing education courses and that the \$50 course provider application fee will generate no more than \$500 annually. The Department anticipates that the 58 currently registered providers offering long-term care insurance continuing education courses may also file applications with the Department for long-term care partnership certification course and continuing education course certification. This expectation is based on the fact that long-term care insurance is very similar to long-term care partnership insurance and providers could amend their Department certified long-term care insurance continuing education

courses or create new courses to meet the Department's long-term care partnership certification and continuing education course requirements. A long-term care partnership certification course must be at least eight hours in length and a licensee must complete at least four hours of long-term care partnership continuing education. Providers may file a course application for both a long-term care partnership certification course and a continuing education course or for only a long-term care partnership certification course or for only a continuing education course. If all 58 Department certified providers filed a course application for an eight hour long-term care partnership certification course and a four hour long-term care partnership continuing education course, the Department could certify approximately 696 additional course hours per year. Applying the \$10 per credit hour application fee, this number of certified course hours could generate \$6,960 annually. Of course, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for more or less than one eight hour long-term care partnership certification course and for more or less than one four hour long-term care partnership continuing education course. If all 58 Department certified providers filed a course application for only a long-term care partnership certification course that was eight hours in length, the Department could certify approximately 464 additional course hours per year. Applying the \$10 per credit hour application fee, this number of certified course hours could generate \$4,640 annually. Again, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for

more or less than one eight hour long-term care partnership certification course. If all 58 Department certified providers filed a course application for only one long-term care partnership continuing education course that was four hours in length, the Department could certify approximately 232 additional course hours per year. Applying the \$10 per credit hour application fee, this number of certified course hours could generate \$2,320 annually. As previously noted, however, this number would increase or decrease respectively based upon whether or not all Department certified providers filed an application for more or less than one four hour long-term care partnership continuing education course.

Mr. Ray has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be no fiscal impact to local governments as a result of the enforcement or administration of these proposals. Mr. Ray has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering the proposed amendments and new sections.

**3. PUBLIC BENEFIT/COST NOTE.** Mr. Ray also has determined that for each year of the first five years the proposed amendments and new sections are in effect, there are several anticipated public benefits, and there will be potential costs for persons required to comply with the proposal.

**Anticipated Public Benefits.** The anticipated public benefits include a potential decrease in the fiscal impact of publicly financing long-term care through the Medicaid program, licensee completion of a Department certified

long-term care partnership certification course, licensee completion of quality long-term care partnership continuing education courses, the increased opportunity for Department certified providers to offer long-term care partnership certification and continuing education courses, and the availability of long-term care partnership insurance coverage for Texas consumers.

In enacting SB 22, the Legislature found that long-term care is currently one of the leading cost drivers in the Medicaid program. (TEXAS SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (Enrolled), SB 22, 80th Legislature, Regular Session (October 18, 2007)). Further legislative findings indicate several other relevant factors. Although Medicaid pays for 67 percent of all nursing facility days in Texas, less than five percent of Texans have private long-term care insurance. As the population in Texas ages, the fiscal impact of publicly financing long-term care may lessen if more Texans are encouraged to purchase private long-term care insurance. However, prior to the enactment of SB 22, the law did not provide any incentive for Texans to purchase private long-term care insurance due to strict asset limits for Medicaid eligibility and required estate recovery of assets. In response, the Legislature enacted SB 22 to create a long-term care partnership program in Texas to provide the necessary incentive for Texans who can afford to purchase long-term care partnership insurance to do so. Texans who purchase long-term care partnership policies under the partnership program will be eligible for asset disregard up to the value of services covered by a private insurance policy, should they ever apply for Medicaid long-term care coverage. However, in order for a long-term care partnership

insurance policy to be offered in Texas, a state plan amendment must meet the requirements of, and be approved under, the Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). This proposal implements the agent training requirements of the DRA so that a state plan amendment may be approved and long-term care partnership policies may be offered in this state.

The proposed sections require licensees seeking to perform any action constituting the act of an agent with regard to a long-term care partnership insurance policy to successfully complete a Department certified long-term care partnership certification course. Additionally, licensees must complete at least four hours of long-term care partnership continuing education in each reporting period following the reporting period in which the licensee completed a long-term care partnership certification course. It is anticipated that licensees that complete the required training will obtain specialized knowledge of long-term care partnership insurance products, which should enable them to provide better information about long-term care partnership insurance to Texas consumers. This will enable Texas consumers to make more informed choices about the purchase of such policies. Additionally, this proposal provides new business opportunities for existing Department certified providers and for persons wishing to become Department certified providers to develop and offer long-term care partnership certification and continuing education courses to licensees.

Lastly, in addition to traditional long-term care insurance products, long-term care partnership insurance coverage will be available to Texas consumers. Long-term care partnership insurance coverage provides Texas consumers with

additional benefits not available through traditional long-term care insurance products. These benefits include asset protection, which prevents an individual's assets from being taken into account when determining financial eligibility for Medicaid. Additionally, an individual's assets will not subsequently be subject to Medicaid liens and recoveries.

**Potential Costs for Persons Required to Comply with the Proposal.**

Proposed New §§19.1022 and 19.1023 Requirements for Licensees.

Under Texas law, any individual who sells a long-term care benefit plan under the partnership for long-term care program must complete training and demonstrate evidence of an understanding of these plans and how they relate to other public and private coverage of long-term care. In addition, proposed new §§19.1022 and 19.1023 impose licensing requirements and certification and continuing education requirements upon such licensees. No individual or licensee is required by law to sell long-term care policies under the partnership program. Therefore, the proposed requirements will apply only to licensees who hold a current Life, Accident, and Health license issued by the Department and who opt to sell long-term care partnership policies or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership policy. Proposed new §§19.1022 and 19.1023 require such licensees to complete a one-time, long-term care partnership certification course no less than eight hours in length and complete no less than four hours of long-term care partnership continuing education in each reporting period following the reporting period in which the licensee completed a long-term

care partnership certification course. The total probable economic costs to licensees for compliance with the proposed sections are estimated to range between \$2.50 per credit hour and \$13 per credit hour, for an average of \$6.50 per credit hour. These estimated costs are based on the following considerations. The Department collected a national sampling of existing long-term care and long-term care partnership continuing education costs per credit hour. The credit hours ranged from one hour to 13 credit hours and their associated costs ranged from \$19.95 to \$52.00. Based on these figures, the range of cost per hour is \$2.50 to \$13, with an average cost per hour of \$6.50. This cost estimate includes credit hour estimates for long-term care and long-term care partnership courses in Texas, Pennsylvania, New York, California, Florida, Colorado, Idaho, Delaware, Iowa, Connecticut, Maine, Ohio, Utah, and Wisconsin. Because a long-term care partnership certification course is required as a one-time only course, it is anticipated that the portion of these costs related to the eight hour long-term care partnership certification course will apply to a licensee affected by this proposal only once, as long as the licensee successfully completes the certification course. Once successfully completed, a licensee is not required to take the long-term care partnership certification course again. The costs attributable to both the required eight hour long-term care partnership certification course and the required four hours of long-term care partnership continuing education may also be minimized because licensees may count the eight hour long-term care partnership certification course and the four hours of long-term care partnership continuing education towards satisfying a portion of

the statutorily required continuing education requirements for a Life, Accident, and Health license. Additionally, because the proposal allows a long-term care partnership certification course and long-term care partnership continuing education course to consist of classroom, classroom equivalent, and self-study instruction, a licensee may opt to complete the required training entirely during non-business hours, thereby obviating the need for the licensee to use business time to complete the training and lose potential revenue.

Proposed §§19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 Requirements for Currently Registered Providers. Under the proposal, providers who are currently registered with the Department have the option of developing and offering long-term care partnership certification and continuing education courses to licensees. No currently registered provider is required by law to develop and offer long-term care partnership certification and continuing education courses. There will be associated costs of compliance with proposed §§19.1006, 19.1007, 19.1009, 19.1012, 19.1014, 19.1022, and 19.1023 for those providers, however, that choose to offer long-term care partnership certification and continuing education courses to licensees. Additional costs for these providers may also result from compliance with §19.1011, depending on whether the provider's long-term care partnership certification or continuing education course consists of classroom, classroom equivalent, or self-study instruction. The Department, however, anticipates that all such costs will be passed on in the form of either course

registration or association membership fees, and the estimated compliance costs for the providers will therefore be significantly minimized.

The probable costs associated with proposed §§19.1006, 19.1009, 19.1011, 19.1014, 19.1022, and 19.1023 collectively result from developing a long-term care partnership certification course or continuing education course that meets the requirements of Subchapter K, monitoring attendee completion of such courses, and developing and maintaining attendance and completion records for such courses. Proposed §19.1009 authorizes a provider to offer a long-term care partnership certification or continuing education course in one of three ways, as classroom, classroom equivalent, or self-study instruction. The costs associated with classroom and self-study instruction may vary substantially based on business decisions made by individual providers. Because the Department is able to identify and quantify the variables associated with the requirements for classroom equivalent courses, the Department has prepared a cost analysis for a classroom equivalent course that meets the proposed requirements of §§19.1006, 19.1009, 19.1011, 19.1022, and 19.1023 for a long-term care partnership certification or continuing education course. The costs associated with classroom or self study instruction courses may be higher or lower than the probable costs identified by the Department for classroom equivalent courses. Providers, however, should be able to identify costs associated with classroom or self-study instruction based on their own business operations and by comparing their cost analysis to the cost analysis provided by the Department for classroom equivalent courses. Proposed §19.1009 requires

that a classroom equivalent course have an interactive electronic component that provides for interactive inquiries meeting certain specifications, as well as have a means to authenticate a licensee's attendance throughout the course. The probable cost of developing a software program sufficient to present interactive inquiries and reasonably confirm licensee attendance in classroom equivalent courses is estimated to be approximately \$2,834 per course for each provider that creates its own program. This cost is based on the construction of a single platform shell that the Department estimates a computer programmer can develop in 80 hours at the mean salary rate of \$35.43 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current/oes\\_tx.htm](http://www.bls.gov/oes/current/oes_tx.htm). The Department has received an estimate that 60 hours of programmer time would be required to develop such a shell program. The Department's 80-hour estimate is to allow for variances in programmer skill. The software platform is not expected to be a unique product and could be used for other classroom equivalent courses or sold to other course providers. The probable cost for developing the interactive inquiries for a classroom equivalent course is estimated to be \$2.27 per inquiry for a minimum of \$45.40 per course. Proposed §19.1014 requires providers to maintain long-term care partnership certification and continuing education records and course materials, including final examinations for a period of at least four years. The total probable costs for maintaining such records and course materials will vary substantially based on business decisions made by individual providers,

including choosing among numerous electronic forms of storage or various methods of physical storage. Each provider, however, has the information necessary to estimate the individual provider's storage costs.

Proposed §19.1007 requires currently registered providers who choose to offer a long-term care partnership certification or continuing education course to submit a course certification application meeting specified requirements to the Department for approval. The Department estimates that the probable cost to currently registered providers of preparing and submitting the information necessary for an initial long-term care partnership certification or continuing education course application, as required in proposed §19.1007, should be less than \$35. This is based on the Department's estimate that a member of a provider's office or administrative staff could complete a course certification application in one hour at the mean salary rate of \$13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current.oes\\_tx.htm](http://www.bls.gov/oes/current.oes_tx.htm). Additionally, the Department estimates that a member of a provider's management staff could review and approve the completed application in less than thirty minutes at the mean salary rate of \$42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current/oes\\_tx.htm](http://www.bls.gov/oes/current/oes_tx.htm).

The proposed amendments to §19.1012 require a fee in the amount of \$10 for each hour of course credit requested on an initial long-term

care partnership certification or continuing education course application, as well as on a resubmission of a long-term care partnership certification or continuing education course application. Additionally, for providers who choose to assign a long-term care partnership certification or continuing education course, proposed §19.1012 requires an assignment fee in the amount of \$50 for each course assignment. The Department estimates that the probable cost to currently registered providers of preparing and submitting a resubmission of a course certification application or a course assignment application to the Department should be less than \$35. This is based on the Department's estimate that a member of a provider's office or administrative staff could complete a resubmission of a course certification application or a course assignment application in one hour at the mean salary rate of \$13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current.oes\\_tx.htm](http://www.bls.gov/oes/current.oes_tx.htm). Additionally, the Department estimates that a member of a provider's management staff could review approve the completed application in less than thirty minutes at the mean salary rate of \$42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current/oes\\_tx.htm](http://www.bls.gov/oes/current/oes_tx.htm).

Any other costs for currently registered providers to comply with the proposed amendments and new sections result from the legislative enactment of

SB 22 and are not a result of the adoption, enforcement, or administration of the proposal.

Proposed Requirements for Persons Not Currently Registered as Providers. Persons who are not currently registered with the Department as providers also have the option of registering with the Department as providers and developing and offering long-term care partnership certification and continuing education courses to licensees. No individual or entity is required by law to develop and offer long-term care partnership certification and continuing education courses. Persons who opt to become a registered provider, however, will be required to comply with proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 and will thereby incur costs for compliance. The Department anticipates that the costs of compliance with §§19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 will be the same for new providers as for those already registered with the Department. These costs are described in the Department's cost analysis in the part of this cost note pertaining to potential costs to comply with Proposed Requirements for Currently Registered Providers.

The proposed amendments to §19.1005 may result in additional costs for persons not currently registered with the Department but who wish to register with the Department as a provider and develop and offer long-term care partnership certification and continuing education courses to licensees. Proposed §19.1005 requires such persons to file a provider application with the Department. The probable cost of preparing and submitting the information

necessary for a provider application should be less than \$35. This is based on the Department's estimate that a member of the provider's office or administrative staff could complete a provider application in one hour at the mean salary rate of \$13.79 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current.oes\\_tx.htm](http://www.bls.gov/oes/current.oes_tx.htm). Additionally, the Department estimates that a member of a provider's management staff could review and approve the completed application in less than thirty minutes at the mean salary rate of \$42.48 per hour, as set forth in the May 2006 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at [http://www.bls.gov/oes/current/oes\\_tx.htm](http://www.bls.gov/oes/current/oes_tx.htm). Proposed §19.1012 also requires a fee in the amount of \$50 for each original provider application submitted and a renewal application fee of \$50 every two years for each provider.

The Department, however, anticipates that all costs expended by newly registered providers for compliance with this proposal will be passed on in the form of either course registration or association membership fees, and the estimated compliance costs will therefore be significantly minimized.

Any other costs for newly registered providers to comply with the proposed amendments and sections result from the legislative enactment of SB 22 and are not a result of the adoption, enforcement, or administration of the proposal.

#### **4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.**

Individual Licensees. As required by the Government Code §2006.002(c), the Department has determined that approximately 101,000 individual licensees qualify as small or micro businesses under the Government Code §2006.001. However, as required by the Government Code §2006.002(c), the Department has determined that the proposed requirements will not have an adverse economic impact on these small or micro businesses. The Department has made these determinations based on the following factors.

No individual licensee is required by law to sell or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy. The proposed rules, however, provide individual licensees an economic opportunity to engage in the long-term care partnership insurance market in Texas. The Department's analysis of any possible costs for compliance with the proposal that are detailed in the Public Benefit/Cost Note section of this proposal apply to individual licensees that opt to utilize this opportunity. As indicated in the Public Benefit/Cost Note analysis, the proposal allows individual licensees to substantially reduce any possible costs for compliance with the proposal by permitting a licensee to choose the most economical method of complying with certain requirements, such as in §19.1009. Section 19.1009 provides individual licensees the option of attending long-term care partnership certification and continuing education courses on the basis of classroom equivalent or self-study instruction during non-business hours. The

availability of the choice to take courses during non-business hours will obviate the need for a licensee to use business time for such courses and thereby lose potential revenue. Further, and more significantly, proposed §19.1022 permits a licensee to satisfy a portion of his currently required continuing education requirements through the completion of the long-term care partnership training prescribed in the proposal. Thus, after completing the required long-term care partnership training prescribed in the proposal, not only will the licensee be able to participate in the long-term care partnership insurance market in Texas, but the licensee will be able to apply eight to twelve hours of continuing education credit to the currently required thirty hours of continuing education for each reporting period. Because individual licensees holding a Life, Accident, and Health license must satisfy thirty hours of continuing education for each reporting period under current regulations, the proposal is not requiring these licensees to incur costs that they are not already incurring under existing regulations. Instead, the proposal is structured in such a way as to prevent licensees from being subject to such redundant and dual costs. Additionally, individuals who hold a current Life, Accident, and Health license and qualify under the §19.1022(b) exception may also realize the additional benefit of being able to actively participate in the long-term care partnership insurance market in Texas for an allotted period of time prior to satisfying the training requirements prescribed in the proposal. These individuals will also be able to satisfy a portion of the currently required continuing education requirements through the completion of the long-term care partnership training prescribed in the proposal.

In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on these small or micro businesses.

Individual Providers and Provider Entities. As required by the Government Code §2006.002(c), the Department has determined that the vast majority of individual providers and provider entities qualify as small or micro businesses under the Government Code §2006.001. No small or micro business is required by law to offer long-term care partnership certification or continuing education courses to licensees or to comply with the proposed amendments. The proposed rules, however, provide an economic opportunity for the small and micro businesses that opt to develop and offer long-term care partnership certification or continuing education courses to licensees. As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on those small or micro businesses who opt to utilize such an opportunity. Adverse economic impact may result from costs associated with developing a long-term care partnership certification course or continuing education course that meets the requirements of Subchapter K, monitoring attendee completion of such courses, developing and maintaining attendance and completion records for such courses, submitting a course certification application or provider application meeting specified requirements to the Department for approval, and paying associated fees. The Department's cost analysis and resulting estimated costs in the Public

Benefit/Cost Note portion of this proposal is equally applicable to these small or micro businesses.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The general purpose of the Insurance Code §§1651.104, 1651.105 and 1651.107 and the Human Resources Code §32.105, which authorize proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022,

and 19.1023, is to establish a long-term care partnership program in Texas. The Insurance Code §1651.104 specifically requires the Commissioner to adopt standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. This section also requires that the adopted standards be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). This is because a state long-term care partnership program must be approved by the U.S. Department of Health and Human Services in accordance with the requirements of the DRA.

These sections also specifically establish the requirement that individuals selling long-term care partnership insurance policies in Texas must complete long-term care partnership training. The Insurance Code §1651.105 requires each individual who sells a long-term care partnership insurance policy to complete training and demonstrate evidence of an understanding of long-term care partnership insurance policies and their relationship to other public and private coverage of long-term care. This requirement is consistent with the requirement in §6021(a)(1)(A)(iii)(V) of the DRA, which requires the state Medicaid agency to provide information and technical assistance to the state insurance department on its role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. This requirement is also incorporated by the Human Resources Code §32.105, which requires the Health

and Human Services Commission to provide information and technical assistance to the Department regarding the Department's role in ensuring that each individual who sells a long-term care partnership insurance policy receives training that satisfies the training requirements imposed under the DRA.

The purpose of proposed §§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 is to protect the economic welfare of consumers that may purchase a long-term care partnership insurance policy and the public and the state of Texas generally by: (i) establishing training requirements for individuals seeking to sell or perform any other action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy in Texas; and (ii) ensuring that persons offering training courses to these individuals comply with the standards prescribed by the Department with regard to provider registration, course certification, course types, course content, course completion and monitoring of completion of courses, and maintenance of records.

First, the proposal prescribes the specific training requirements applicable to individual licensees, including: (i) the requirement that a licensee complete a one-time, eight hour long-term care partnership certification course; (ii) the requirement that a licensee complete at least four hours of ongoing training, in the form of continuing education; (iii) the specific topics that must be addressed in a long-term care partnership certification or continuing education course; and (iv) reciprocity among states with regard to long-term care partnership training. Second, the proposal provides for a uniform, third party vendor system in which

persons may register with the Department to develop and offer long-term care partnership certification and continuing education courses to licensees. The proposal requires these providers to register with the Department, to submit course applications for approval, to comply with Department prescribed requirements related to courses, to monitor course completion, and to maintain records of course completion. These requirements allow the Department to exercise appropriate oversight of the registered providers to ensure that the courses they offer to licensees comply with Department regulation. For example, a provider is responsible for ensuring that each of its long-term care partnership training courses address the eight subject areas required by the proposal. A provider is responsible for ensuring that it offers its long-term care partnership training courses in an approved format. A provider must ensure that licensee attendance for each of its courses is accounted for, and it must also maintain records evidencing that a licensee successfully completed a course. These requirements collectively ensure that providers are offering meaningful, appropriate long-term care partnership training courses to licensees. Additionally, the proposal implements the purpose of the authorizing statutes, which is to ensure that individual licensees receive long-term care partnership training that will allow them to demonstrate evidence of an understanding of long-term care partnership insurance policies and how they relate to other public and private coverage of long-term care.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of proposed

§§19.1005, 19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, 19.1022, and 19.1023 and the authorizing statutes of the Insurance Code and the Human Resources Code, is to protect consumer economic interests and the state's welfare, there are no additional regulatory alternatives to the required comprehensive licensee training and provider requirements that will sufficiently protect the economic interests of consumers and the welfare of the state.

**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, therefore, 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 Monday, April 21, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner for the Licensing Program, Mail Code 107-1A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk 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 proposed amendments and new sections are proposed under the Insurance Code §§1651.104, 1651.105, 1651.107, and 36.001 and the Human Resources Code §32.105. The Insurance Code §1651.104 provides that the Commissioner, in consultation with the Texas Health and Human Services Commission (HHSC), shall adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). Section 6021(a)(1)(A)(iii)(V) of the DRA requires the state Medicaid agency under section 1902(a)(5) to provide information and technical assistance to the state insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The Insurance Code §1651.105 requires that each individual who sells a long-term care benefit plan under the partnership for long-term care program complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care. Section 1651.107 provides that the Commissioner may adopt rules as necessary to implement the subchapter. The Human Resources Code §32.105 requires the HHSC to provide information and technical assistance to

the Texas Department of Insurance regarding that department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans as required by §1651.105, Insurance Code. The training must satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal DRA. 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.

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

<u>Rule</u>	<u>Statute</u>
§§19.1001, 19.1002, 19.1005 - 19.1007, 19.1009, 19.1011 – 19.1012, 19.1014, 19.1022, and 19.1023	Human Resources Code §32.105; Insurance Code §§1651.104, 1651.105, and 1651.107; Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

**9. TEXT.**

**§19.1001. General Provisions.**

(a) Purpose. The purpose of this subchapter is to specify:

(1) [~~set forth~~] procedures and requirements for certification of continuing education courses and licensee continuing education requirements as authorized under the Insurance Code; [~~and~~]

(2) ~~[set forth the]~~ procedures and requirements for certification and approval of adjuster prelicensing education courses and adjuster examinations as authorized under the Insurance Code §§4101.054 and 4101.056; and [Article 21.07-4 §10.]

(3) procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training requirements as authorized under the Insurance Code Chapter 1651, Subchapter C, and the Human Resources Code Chapter 32, Subchapter C.

(b) – (c) (No change.)

~~[(d) Provider compliance date. Currently registered providers shall bring their registrations into compliance with this subchapter on or before the later of the date that their current registration expires or one year from the effective date of this subchapter. Providers shall bring their currently certified course topics and criteria into compliance with this subchapter on or before the later of the date that the course's current certification expires or one year from the effective date of this subchapter. All course instructors and new applicants for provider registration and course certification shall comply with this subchapter on the effective date of the relevant sections. To the extent that any provider or course does not otherwise have a compliance date under this subsection, those providers and courses must be in compliance with this subchapter on or before December 31, 2003. A provider may elect to comply with this subchapter before it is required to do so, including re-evaluating the number of contact hours~~

~~awarded for a classroom or classroom equivalent course, or for ethics course designations, by submitting a written request to the department.]~~

**§19.1002. Definitions.**

(a) (No change.)

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

(1) – (16) (No change.)

(17) Long-term care partnership insurance policy--For purposes of §19.1022 and §19.1023 of this subchapter only, (relating to Long-Term Care Partnership Certification Course and Long-Term Care Partnership Continuing Education), a policy established under the Human Resources Code, Chapter 32, Subchapter C, and the Insurance Code, Chapter 1651, Subchapter C.

(18)[(17)] National designation certification--A professional designation which is:

(A) nationally recognized in the insurance industry; and

(B) issued by an entity that maintains a not-for-profit status and has been in existence for at least five years.

(19)[(18)] One-time-event--A type of classroom course complying with §19.1009(f) of this title.

(20)[(19)] Provider--An individual or organization including a corporation, partnership, depository institution, insurance company, or entity chartered by the Farm Credit Administration as defined in the Insurance Code

§4001.108, registered with the department to offer continuing education courses for licensees, ~~[and/or]~~ prelicensing instruction for adjusters, or long-term care partnership certification courses for licensees.

~~(21)~~~~(20)~~ Provider registration--The process of a provider seeking permission to offer continuing education courses for licensees, ~~[and]~~ prelicensing education for adjusters, or long-term care partnership certification courses for licensees.

~~(22)~~~~(21)~~ Qualifying course--Insurance courses for which a licensee may receive continuing education credit and are:

(A) offered for credit by accredited colleges, universities, or law schools;

(B) part of a national designation certification program;

(C) approved for classroom, classroom equivalent, or participatory credit by the continuing education approval authority of a state bar association or state board of public accountancy; or

(D) certified or approved for continuing education credit under the guidelines of the Federal Crop Insurance Corporation.

~~(23)~~~~(22)~~ Reporting period--The period from the issue date or last renewal date of the license to the expiration date of the license, generally a two-year period.

~~(24)~~~~(23)~~ Self study--A course complying with §19.1009(e) of this title.

(25)~~(24)~~ Speaker--An individual who shall be speaking from special knowledge regarding the business of insurance obtained through experience and position in professional or social organizations, industry, or government.

(26)~~(25)~~ Student--A licensee or adjuster applicant enrolled in and attending a certified course for credit.

(27)~~(26)~~ TDI license number--An identification number the department assigns to the licensee and found on the license certificate.

(28)~~(27)~~ Visually monitored environment--An environment permitting visual identification of students and visual confirmation of attendance, including observation by camera.

**§19.1005. Provider Registration, Instructor, and Speaker Criteria.**

(a) A provider applicant seeking initial registration or renewal registration from the department as a continuing education provider, ~~[and/or]~~ adjuster prelicensing education provider, or long-term care partnership certification course provider shall submit to the department or its designee, an application on forms provided by the department and all applicable fees as set forth in §19.1012 of this title (relating to Forms and Fees). The department may require the following items in order to approve or disapprove a provider's registration request:

(1) – (6) (No change.)

(7) A statement as to whether or not the provider applicant has had any certification or approval for a professional continuing education course, ~~[or]~~

prelicensing education course, or a long-term care partnership certification course revoked, suspended, or placed on probation, whether by agreement or as ordered in an administrative or judicial proceeding, by a court, financial or insurance regulator, or other agency of this state, another state, or the United States;

(8) – (9) (No change.)

(b) Providers shall have a single registration and may, but are not required to, certify and offer [~~both~~] continuing education courses, [~~and~~] adjuster prelicensing education courses, and long-term care partnership certification courses.

(c) – (e) (No change.)

(f) Providers may use speakers only in conjunction with one-time-event continuing education courses. Providers may not use speakers in conjunction with other continuing education courses, [~~or~~] adjuster prelicensing courses, or long-term care partnership certification courses unless the speaker qualifies as an instructor.

(g) (No change.)

**§19.1006. Course Criteria.**

(a) – (b) (No change.)

(c) To be certified as a long-term care partnership certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1022 of this

subchapter (relating to Long-Term Care Partnership Certification Course).

Unless specifically stated otherwise, this subchapter shall apply equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes.

(d)[(e)] The following course content shall not be considered applicable to a licensee's continuing education requirements:

(1) Meetings held in conjunction with the regular business of the licensee or courses or training relating to the marketing and business practices of a specific company;

(2) Course content teaching general accounting, speed reading, other general business skills, computer use, or computer software application use;

(3) Course content teaching motivation, goal-setting, time management, communication, sales, or marketing skills;

(4) Course content providing for prelicensing training qualifying examination preparation;

(5) Course content that does not meet the requirement of subsection (a) of this section; and

(6) Course content that is substantially:

(A) a glossary, dictionary, or index of insurance terms without independent distinction as to the application of these terms to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance; or

(B) a recitation of statutes, rules, legal principles, or theories without independent distinction as to the application of these issues to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance.

~~(e)~~ A single continuing education course may include both ethics and consumer protection credit topics with other topics meeting the requirements of subsection (a) of this section.

**§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions.**

(a) The provider shall submit the course certification application to the department or its designee and include the following information:

(1) – (6) (No change.)

(7) A sample of the certificate of completion which shall be used when licensees or adjuster applicants successfully complete the certified course for approval by the department or its designee. The certificate of completion must contain, at a minimum, the following information:

(A) a statement that the course is for continuing education credit, ~~or~~ adjuster prelicensing training, or long-term care partnership certification;

(B) – (F) (No change.)

(G) for continuing education courses, TDI license number and name of student completing the course; ~~and~~

(H) for adjuster prelicensing training, the name of the student completing the course; and

(I) for long-term care partnership certification, TDI license number and the name of the student completing the course;

(8) A statement that the course is intended for:

(A) continuing education classroom, classroom equivalent, or self study credit and whether the course is primarily intended to be open to all licensees or shall have a restricted enrollment; [or]

(B) adjuster prelicensing education and whether the course is primarily intended to be open to all adjuster applicants or shall have a restricted enrollment; or

(C) long-term care partnership certification and whether the course is primarily intended to be open to all licensees or will have a restricted enrollment;

(9) – (10) (No change.)

(b) – (e) (No change.)

**§19.1009. Types of Courses.**

(a) – (b) (No change.)

(c) Providers must offer long-term care partnership certification courses only as a complete course of study that meets the requirements of §19.1022 of this subchapter (relating to Long-Term Care Partnership Certification Course).

The course of study for long-term care partnership certification courses may consist of classroom, classroom equivalent, and self study instruction.

(d)~~(e)~~ Classroom courses may include lectures, seminars, audio, video, computer-based instruction, and teleconferences that meet the following requirements:

(1) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(2) At least three students and an instructor must be involved in each presentation of the course; however, in circumstances involving remote presentations, all students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(3) Question and answer and discussion periods must be provided by:

(A) an instructor making a live presentation of the course to licensees in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor; or

(B) an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room

which shall allow for immediate inquiries and responses of students to the instructor.

(4) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(e)~~(d)~~ Classroom equivalent courses may be internet, CD-ROM, DVD, or other computer-based presentations that:

(1) May not have more than one student at any one presentation of the course.

(2) Must have an interactive electronic component that:

(A) provides for at least four interactive multiple choice inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course;

(B) requires answering 70% of the inquiries for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course;

(C) identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer;

(D) generates a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis if the student

does not achieve the 70% correct response rate necessary to advance to the next section;

(E) is capable of generating at least two separate sets of inquiries for each inquiry period;

(F) provides for a method to directly transmit the final course completion results to the provider or a printed course completion receipt to be sent to the provider for issuance of a completion certificate; and

(G) has a means to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course.

(3) A comprehensive final examination is not required for classroom equivalent courses.

(f)~~(e)~~ Self study courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the department.

(g)~~(f)~~ One-time-event courses shall:

(1) meet the requirements of a classroom course, except that the course may be offered only in a lecture or seminar format at particular events such as conventions and organizational meetings; and

(2) be designed to be offered as a single live presentation, except that providers may offer the course as a live presentation an additional three times per year within this state.

~~(h)~~~~(g)~~ One-time-event courses may be presented by speakers or instructors.

~~(i)~~~~(h)~~ Qualifying courses shall be categorized as classroom, classroom equivalent, or self study based upon the teaching format in which the course is offered.

**§19.1011. Requirements for Successful Completion of Continuing Education Courses.**

(a) Providers shall use, at a minimum, actual attendance rosters to certify completion of a certified classroom or one-time-event continuing education course or a certified classroom long-term care partnership certification course. The department requires each student to attend at least 90% of the course. Providers shall establish a means to ensure that each student attended at least 90% of the course. Attendance records must include, at a minimum, sign-in and sign-out sheets, and the legible names, addresses, and TDI license number of each student in attendance. Providers may establish assessment measurements or any other completion requirements, in addition to attendance, for successful completion of a classroom continuing education or classroom long-term care partnership certification course, but those requirements must be fully disclosed in

the registration materials before the student purchases the course. Providers shall determine successful completion of these additional requirements.

(b) Providers shall use the periodic interactive inquiries to determine completion of certified classroom equivalent continuing education or long-term care partnership certification courses. A student must complete all inquiry sections with a minimum score of at least 70% for each section.

(c) Providers shall use a written, online, or computer-based final examination as the means of completion for all certified self study continuing education or long-term care partnership certification courses. The department does not require providers to monitor continuing education or long-term care partnership certification self study examinations. Course records for each examination attempt must include, at a minimum, the date the exam was taken, the final examination score, the examination version used, the legible name, address, and the TDI license number of each student.

(d) – (g) (No change).

**§19.1012. Forms and Fees.**

(a) (No change.)

(b) The department establishes the following nonrefundable fees, which are necessary to administer the continuing education and long-term care partnership certification programs [~~program~~] and shall apply unless the department contracts with a third party to provide continuing education or long-term care partnership certification services:

(1) (No change.)

(2) Continuing education and long-term care partnership certification course certification:

(A) – (B) (No change).

(3) (No change).

**§19.1014. Provider Compliance Records.**

(a) Providers shall maintain all continuing education records, adjuster prelicensing education records, long-term care partnership certification records, attendance records, and course materials, including final examinations for at least four years, and the department or its designee may review these materials at any time.

(b) – (d) (No change)

(e) If continuing education records, adjuster prelicensing records, or long-term care partnership certification records are audited or reviewed and the validity or completeness of the records are questioned, the provider shall have 30 days from the date of notice to correct discrepancies or submit new documentation.

(f) (No change.)

**§19.1022. Long-Term Care Partnership Certification Course.**

(a) Except as provided in subsection (b) of this section, an individual may not perform any action constituting the act of an agent under the Insurance Code

§4001.051 with regard to a long-term care partnership insurance policy unless the individual:

(1) holds a current Life, Accident, and Health license issued by the department; and

(2) has completed a long-term care partnership certification course meeting the requirements of this subchapter.

(b) An individual who holds a current Life, Accident, and Health license issued by the department and is performing an action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care insurance policy at the time of the effective date of this section may perform an action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy at the time of the effective date of this section, provided the individual completes a long-term care partnership certification course meeting the requirements of this subchapter no later than January 1, 2009.

(c) This section establishes the standards for a long-term care partnership certification course. The course shall:

(1) be submitted to the department for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least eight hours in length; and

(3) cover the subjects described in subsection (g) of this section.

(d) Licensees may count a long-term care partnership certification course toward completion of the continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements). If a licensee chooses to use a long-term care partnership certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003, the licensee shall comply with §19.1013 of this subchapter (relating to Licensee Record Maintenance).

(e) A licensee shall maintain proof of completion of a long-term care partnership certification course for a period of four years from the date of completion of the course. Upon request, the licensee shall provide proof of completion of the long-term care partnership certification course to the department.

(f) A provider issued completion certificate for a long-term care partnership certification course must comply with the requirements of §19.1011 of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses).

(g) Course subjects for a long-term care partnership certification course outline must include topics that address:

- (1) long-term care insurance;
- (2) long-term care services and providers;
- (3) qualified state long-term care insurance partnership programs,

which must include:

- (A) state and federal requirements;

(B) the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;

(C) available long-term care services and providers; and

(D) changes or improvements in long-term care services or providers;

(4) alternatives to the purchase of private long-term care insurance;

(5) the effect of inflation on benefits and the importance of inflation protection;

(6) consumer suitability standards and guidelines;

(7) Medicaid eligibility criteria and requirements, including financial eligibility criteria and requirements; and

(8) asset disregard under qualified state long-term care insurance partnership programs, including the interaction between asset disregard and Medicaid rules.

(h) Providers must meet all of the requirements of this subchapter before offering a long-term care partnership certification course to licensees.

(i) A non-resident licensee is not required to complete a long-term care partnership certification course required by this subchapter if:

(1) the non-resident licensee holds a comparable, current license issued in his or her home state;

(2) the home state of the non-resident licensee qualifies as a long-term care partnership state;

(3) upon department request, an insurer who has appointed the non-resident licensee is able to provide proof of the non-resident licensee's completion of a long-term care partnership certification course in the non-resident licensee's home state with requirements substantially similar to those in this subchapter; and

(4) upon department request, the non-resident licensee is able to provide proof of his or her completion of a long-term care partnership certification course in his or her home state with requirements substantially similar to those in this section.

(j) A non-resident licensee whose home state does not qualify as a long-term care partnership state may comply with the requirements of this subchapter by:

(1) completing a department certified long-term care partnership certification course in this state that meets the requirements of this subchapter;  
or

(2) designating a home state that qualifies as a long-term care partnership state and meeting the requirements of subsection (i) of this section.

(k) Licensees that may qualify for the exemptions provided under §19.1004 of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

(l) Information and resource material relating to the course subjects required in subsection (g) of this section, including a section entitled, "Resource Document for Agent Training: Texas Medicaid Eligibility and the Long-Term Care Partnership", may be found at the following website sponsored by the Texas Long-Term Care Partnership, located at [www.ownyourfuturetexas.com](http://www.ownyourfuturetexas.com).

**§19.1023. Long-Term Care Partnership Continuing Education.**

(a) In addition to completing the long-term care partnership certification course required by §19.1022 of this subchapter (relating to Long-Term Care Partnership Program Certification Course), in each reporting period following the reporting period in which a licensee completed a certification course, a licensee intending to perform any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a long-term care partnership insurance policy must also complete at least four hours of department certified continuing education during each reporting period as part of the licensee's continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements).

(b) The department certified continuing education required under subsection (a) of this section must:

(1) comply with the requirements of §19.1006 of this subchapter (relating to Course Criteria); and

(2) enhance the knowledge, understanding, and professional competence of the student with regard to subjects described in §19.1022 of this subchapter.

(c) Providers must meet all the requirements of this subchapter before offering a long-term care partnership continuing education course to licensees.

(d) A non-resident licensee is not required to complete four hours of long-term care partnership continuing education required by this subchapter if:

(1) the non-resident licensee is in compliance with the long-term care partnership continuing education requirements of his or her home state; and

(2) the home state of the non-resident licensee qualifies as a long-term care partnership state.

(e) A non-resident licensee whose home state does not qualify as a long-term care partnership state may comply with the requirements of this subchapter by:

(1) completing four hours of department certified long-term care continuing education in this state that meets the requirements of this subchapter;

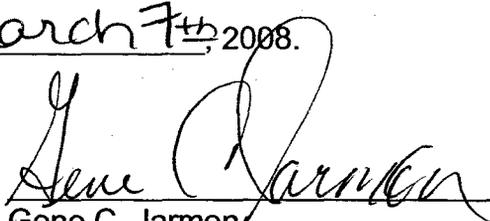
or

(2) designating a home state that qualifies as a long-term care partnership state and meeting the requirements of subsection (d) of this section.

(f) Licensees that may qualify for the exemptions provided under §19.1004 of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

**9. CERTIFICATION.** This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on March 7<sup>th</sup>, 2008.

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