

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES
28 TAC §3.1 and §3.5

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.1 and §3.5, concerning life, accident, and health insurance and annuities.

EXPLANATION. Amendments to §3.1 and §3.5 remove references to "prepaid legal services," which is comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, Regular Session (2003) (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, Regular Session (2019) (SB 1623).

Amendments to §3.1 renumber paragraphs and redesignate a subclause in the section as appropriate to reflect the removed text. An amendment also updates an internal reference to reflect the renumbering of the paragraphs.

Proposed amendments to renumbered §3.1(10)(A)(vi) and §3.1(10)(B)(v) remove cross-references to "Figure Number 45 of §26.27 of this title" because that figure and section were repealed, effective May 2017.

An amendment to §3.5(a) updates an internal reference to reflect the removal of paragraph (5) in the subsection.

An amendment to §3.5(a) updates the heading of an administrative code section in a citation to the section.

The proposed amendments also include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity, including replacing "shall" with "must," changing the words "chapter" and "subchapter" to "title" in references to administrative code sections, and replacing "which" with "that." Amendments also update citations to Insurance Code provisions that have changed due to the codification of Insurance Code articles.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Pat Brewer, team lead of the Regulatory Initiatives Office of the Life and Health Division, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of the amendments.

Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Brewer expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 961 and Occupations Code Chapter 953.

Ms. Brewer expects that the proposed amendments will not impose a cost on stakeholders because they simply recognize that prepaid legal services have been removed from TDI's regulation, as required by Insurance Code §961.003 and Occupations Code §953.003. As a result, any unforeseen costs associated with this deregulation are a result of the statute and not the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create a new regulation;
- will not repeal existing regulations;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on January 11, 2021. Send your comments to ChiefClerk@tdi.texas.gov; or to the

Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 11, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §3.1 and §3.5 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

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

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

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

CROSS-REFERENCE TO STATUTE. Section 3.1 and §3.5 implement Occupations Code Chapter 953, as added by SB 597, and Insurance Code §961.003, as amended by SB 1623.

TEXT.

§3.1. Scope.

This subchapter applies to all contracts, policies, applications, certificates of insurance, insert pages, riders, limited partial refilings, matrix filings, disclosure forms, rates, outline of coverage, and other documents subject to be filed with the Texas Department of Insurance pertaining to the following:

- (1) individual and group life insurance;
- (2) individual and group annuities;
- (3) individual and group accident and health insurance (including long-term care and Medicare supplement under Insurance Code Chapters 1651 and 1652 [~~Chapter 3, Subchapter G and long-term care~~]);
- (4) individual and group combination life and accident and health insurance;
- (5) individual and group combination annuity and accident and health insurance;
- (6) point of service products as described in Insurance Code Chapter 1273 [~~Article 3.64~~] and §21.2901 of this title (relating to Definitions);
- (7) individual and group credit life and individual and group credit accident and health insurance under Insurance Code Chapters 1131, 1153, and 1251 [~~Articles 3.50, 3.51-6, and 3.53~~];
- (8) [~~individual and group prepaid legal insurance under Insurance Code Chapter 23 and Article 5.13-1 and Chapter 23 of this title (relating to Prepaid Legal Service);~~]
- [(9)] rates, subject to review and approval by the department including, but not limited to:
 - (A) individual and group credit life;
 - (B) individual and group credit accident and health insurance;
 - (C) Medicare supplement; and
 - (D) changes in rating methodologies for small employer plans;

(9) ~~[(10)]~~ Medicare SELECT plans of operation and amendments;

(10) ~~[(11)]~~ miscellaneous documents and information necessary to make a filing complete or for a comprehensive review of the filing including, but not limited to:

(A) documents that ~~[which]~~ must be accompanied by the transmittal checklist described in §3.3(b) of this title ~~[subchapter]~~ (relating to Transmittal Information) as follows:

(i) articles of incorporation;

(ii) constitutions and bylaws and/or trust agreements;

(iii) disclosures;

(iv) outlines of coverage;

(v) rates, other than the rates listed in paragraph (8) ~~[(9)]~~ of this section, including the following:

(I) individual accident and health;

(II) long-term care; and

(III) life; and

~~[(IV) prepaid legal.]~~

(vi) certifications related to form filings, readability scores, and actuarial memoranda ~~[(other than Figure Number 47 of §26.27 of this title (relating to Forms))].~~

(B) documents that ~~[which]~~ must be accompanied by the transmittal form described in §3.3(c) of this title ~~[subchapter]~~ as follows:

(i) life insurance illustration information;

(ii) Medicare supplement refund calculations;

(iii) preferred provider health benefit plan provider directories;

(iv) preferred provider service or geographic descriptions;

(v) certifications including those related to small or large employer health benefit plans [~~(except for Figure Number 45 of §26.27 of this title)~~]; and

(vi) annual reports including:

(I) long-term care lapse and replacement reports;

(II) long-term care rescission reports;

(III) long-term care denial of claims reports;

(IV) long-term care report required by Insurance Code §1651.053 [~~Article 3.70-12 §4~~];

(V) Medicare supplement rate reports; and

(VI) Medicare SELECT grievance reports.

§3.5. Filing Authorities and Categories.

(a) All filings submitted pursuant to this subchapter must [~~shall~~] be identified under specific filing authorities as defined by the Insurance Code or Administrative Code. The authorities under which all filings are identified are described in paragraphs (1) – (4) [~~(5)~~] of this subsection as follows:

(1) review pursuant to Insurance Code §1701.054 [~~Article 3.42(d)~~];

(2) file and use pursuant to Insurance Code §1701.052 [~~Article 3.42(e)~~]; however, any form that has been previously disapproved pursuant to §3.7(d) of this title [~~subchapter~~] (relating to Form Acceptance and Procedures [~~Form Review, Acceptance, Approval, Disapproval, Correction, Exemption, Withdrawals, and Notice of Action~~]) is not eligible for filing under this category;

(3) exempt pursuant to Insurance Code §1701.005 [~~Article 3.42(h)~~] and Subchapter Z of this title [~~chapter~~] (relating to Exemption from Review and Approval of Certain Life, Accident, Health and Annuity Forms and Expedition of Review); and

(4) credit life insurance or credit accident and health insurance pursuant to Insurance Code Chapters 1131, 1153, and 1251. [~~Articles 3.50, 3.51-6(4), and 3.53; and~~]

~~[(5) prepaid legal insurance pursuant to Insurance Code Chapter 23 and Article 5.13-1 and Chapter 23 of this title (relating to Prepaid Legal Service).]~~

(b) (No change.)

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

Issued in Austin, Texas, on November 23, 2020.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance