

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE B. LIABILITY INSURANCE FOR PHYSICIANS AND
HEALTH CARE PROVIDERS

CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND
HEALTH CARE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1901.001. DEFINITIONS. In this chapter:

(1) "Health care provider" means:

(A) a person, partnership, professional association, corporation, facility, or institution, or an officer, employee, or agent of the person or entity acting in the course and scope of authority, employment, or agency, as applicable, if the person or entity is licensed or chartered by this state to provide health care as:

- (i) a registered nurse;
- (ii) a hospital;
- (iii) a dentist;
- (iv) a podiatrist;
- (v) a chiropractor;
- (vi) an optometrist or therapeutic optometrist;
- (vii) a pharmacist;
- (viii) a veterinarian;
- (ix) a not-for-profit kidney dialysis center;
- (x) a blood bank that is a nonprofit corporation chartered to operate a blood bank and is accredited by the American Association of Blood Banks;
- (xi) a for-profit or not-for-profit nursing home; or
- (xii) a for-profit or not-for-profit assisted living facility; or

(B) a health care practitioner or facility that the commissioner, in accordance with Section [2203.103\(b\)](#),

determines is eligible for coverage under this chapter.

(2) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(3) "Physician" means a person licensed to practice medicine in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.002. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) an insurer authorized to write or engaged in writing professional liability insurance for a physician or health care provider; and

(2) a rating organization acting on behalf of an insurer described by Subdivision (1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.003. APPLICABILITY OF OTHER LAW. Chapters 2251 and 2301 and Article 5.13-2 apply to rates and forms for professional liability insurance for physicians and health care providers under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.004. ANNUAL REPORTS. (a) An insurer that issues professional liability insurance policies covering physicians and health care providers shall file annually with the commissioner a report of:

(1) all claims and the amounts of those claims;

(2) amounts of claims reserves;

(3) investment income of the insurer derived from medical professional liability premiums;

(4) information relating to amounts of judgments and settlements paid on claims; and

(5) other information required by the commissioner.

(b) The commissioner may promulgate a form on which the

information under Subsection (a) must be reported. The form must require that the information be reported in an accurate manner and be reasonably calculated to:

- (1) facilitate interpretation; and
- (2) protect the confidentiality of the physician or health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.005. RULES. The commissioner shall establish by rule:

- (1) criteria that insurers must follow in establishing reconsideration procedures under Section 1901.101; and
- (2) standards and procedures to be followed in the review of rates and premiums by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. RATE STANDARDS

Sec. 1901.051. CONSIDERATIONS IN SETTING RATES. (a) In setting rates, an insurer shall consider:

- (1) past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in this state, subject to Subsection (b);
- (2) a reasonable margin for underwriting profit and contingencies;
- (3) investment income; and
- (4) dividends or savings allowed or returned by the insurer to the insurer's policyholders or members.

(b) If the department finds that the group or risk to be insured is not of sufficient size to be credible, an insurer must also consider in setting rates past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.052. GROUPING OF RISKS. In setting rates, an insurer may group risks by classification, rating schedule, or any other reasonable method.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.053. MODIFICATION OF CLASSIFICATION RATES. (a) An insurer may modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions.

(b) The standards may measure any difference among risks that can be demonstrated to have a probable effect on losses or expenses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.054. LIMITATIONS ON RATES. (a) Rates set under this chapter may not be excessive or inadequate, as described by this section, or unreasonable or unfairly discriminatory.

(b) A rate is not excessive unless the rate is unreasonably high for the insurance coverage provided.

(c) A rate is not inadequate unless the rate is unreasonably low for the insurance coverage provided and:

(1) is insufficient to sustain projected losses and expenses; or

(2) the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.034(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.034(a), eff. September 1, 2007.

Sec. 1901.0541. USE IN UNDERWRITING OF CERTAIN INFORMATION RELATED TO LAWSUITS; REFUND. (a) Notwithstanding any other provision of this code, an insurer may not consider for the purpose of setting premiums or reducing a claims-free discount for a particular insured physician's professional liability insurance a lawsuit filed against the physician if:

(1) before trial, the lawsuit was dismissed by the claimant or nonsuited; and

(2) no payment was made to the claimant under a settlement agreement.

(b) An insurer that, in setting premiums or reducing a claims-free discount for a physician's professional liability insurance, considers a lawsuit filed against the physician shall refund to the physician any increase in premiums paid by the physician that is attributable to that lawsuit or reinstate the claims-free discount if the lawsuit is dismissed by the claimant or nonsuited without payment to the claimant under a settlement agreement. The insurer shall issue the refund or reinstate the discount on or before the 30th day after the date the insurer receives written evidence that the lawsuit was dismissed or nonsuited without payment to the claimant under a settlement agreement.

(c) This section does not prohibit an insurer from considering and using aggregate historical loss and expense experience applicable generally to a classification of physicians' professional liability insurance to set rates for that classification to the extent authorized by Chapter 2251 and Article 5.13-2. Notwithstanding Section 2251.052(c), an insurer may not assign a physician to a particular classification based on a factor described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.035(a), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.035(a), eff. September 1, 2007.

Sec. 1901.055. CLAIM SURCHARGE. A claim surcharge assessed by an insurer against a physician or health care provider under a

professional liability insurance policy may be based only on claims actually paid by an insurer as a result of:

- (1) a settlement; or
- (2) an adverse judgment or decision of a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Sec. 1901.056. ABSOLUTE RATES PROHIBITED. (a) In this section, "absolute rates" means rates, rating plans, or rating classifications that are filed under Chapter [2251](#) or Article 5.13-2 by an insurer or authorized rating organization and that are required to be used, to the exclusion of all others, by each insurer authorized to write policies.

(b) A provision of this chapter, Chapter [2251](#), or Article 5.13-2 relating to the regulation of rates, rating plans, and rating classifications for professional liability insurance for physicians and health care providers does not:

(1) give the commissioner the power to promulgate uniform or absolute rates; or

(2) prevent different insurers or organizations authorized to file rates from filing different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES. In approving rates under this chapter, the department shall consider the impact of risk management courses taken by physicians and health care providers in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 3B.034(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 9.034(b), eff. September 1, 2007.

SUBCHAPTER C. REVIEW OF RATES

Sec. 1901.101. RECONSIDERATION OF RATES AND PREMIUMS. (a) Each insurer to which this chapter applies shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage.

(b) The procedure must include:

(1) an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance; and

(2) a requirement that the insurer reconsider the rate or premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.102. APPEAL. A physician or health care provider that is not satisfied with a decision under procedures established under Section 1901.101 may appeal to the commissioner for:

(1) a review of the rate or premium; and

(2) a determination of whether the rate or premium being charged complies with criteria under Sections 1901.051-1901.054 and 1901.057.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. BEST PRACTICES FOR NURSING HOMES

Sec. 1901.151. BEST PRACTICES. (a) The commissioner shall adopt best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes.

(b) In developing or amending the best practices, the commissioner shall consult with the Health and Human Services Commission and a task force appointed by the commissioner.

(c) The task force must be composed of representatives of:

(1) insurers that write professional liability insurance for nursing homes;

(2) the Texas Medical Liability Insurance Underwriting Association;

(3) nursing homes; and

(4) consumers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.152. CONSIDERATION OF BEST PRACTICES IN SETTING RATES. In setting rates for professional liability insurance applicable to a for-profit or not-for-profit nursing home, an insurer or the Texas Medical Liability Insurance Underwriting Association may consider whether the nursing home adopts and implements the best practices adopted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.153. STANDARD OF CARE FOR CIVIL ACTIONS NOT ESTABLISHED. The best practices for risk management and loss control adopted under this subchapter do not establish standards of care for nursing homes applicable in a civil action against a nursing home.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. POLICY FORMS

Sec. 1901.201. STANDARDIZED POLICY FORMS; APPROVAL OF OTHER FORMS. (a) The commissioner shall prescribe standardized policy forms for occurrence, claims-made, and claims-paid professional liability insurance policies for physicians and health care providers.

(b) An insurer may not use a form other than a standardized policy form in writing professional liability insurance for physicians and health care providers unless the form has been approved by the commissioner.

(c) An insurer writing professional liability insurance for physicians and health care providers may use an endorsement if the endorsement has been filed with and approved by the commissioner. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. COVERAGE

Sec. 1901.251. PREMIUM BASIS. An insurer may not write a professional liability insurance policy under this chapter on less than an annual premium basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.252. COVERAGE FOR EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b), a medical professional liability insurance policy issued to or renewed for a physician or health care provider in this state may not include coverage for exemplary damages that may be assessed against the physician or health care provider.

(b) The commissioner may approve an endorsement form that provides for coverage for exemplary damages for use on a medical professional liability insurance policy issued to:

(1) a hospital; or

(2) a for-profit or not-for-profit nursing home or assisted living facility.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.253. NOTICE OF PREMIUM INCREASE, CANCELLATION, OR NONRENEWAL. (a) An insurer that issues a professional liability insurance policy for a physician or health care provider must provide to the insured written notice of at least 90 days if the insurer intends to:

(1) increase the premiums on the policy; or

(2) cancel or not renew the policy for a reason other than for nonpayment of premiums or because the insured is no longer

licensed.

(b) If the insurer intends to increase the premiums, the insurer shall state in the notice the amount of the increase.

(c) If the insurer intends to cancel or not renew the policy, the insurer shall state in the notice the reason for cancellation or nonrenewal.

(d) An insurer may provide notice of cancellation under this section only within the first 90 days from the effective date of the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.254. PROHIBITION OF USE OF CERTAIN INFORMATION FOR PHYSICIAN OR HEALTH CARE PROVIDER. (a) For the purpose of writing professional liability insurance for physicians and health care providers, an insurer may not consider whether, or the extent to which, a physician or health care provider provides services in this state to individuals who are recipients of Medicaid or covered by the state child health plan program established by Chapter 62, Health and Safety Code, including any consideration resulting in:

- (1) denial of coverage;
- (2) refusal to renew coverage;
- (3) cancellation of coverage;
- (4) limitation of the amount, extent, or kind of coverage available; or

- (5) a determination of the rate or premium to be paid.

(b) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.035(b), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.035(b), eff. September 1, 2007.

Sec. 1901.255. COVERAGE FOR VOLUNTEER HEALTH CARE PROVIDERS. (a) In this section:

- (1) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(2) "Volunteer health care provider" has the meaning assigned by Section [84.003](#), Civil Practice and Remedies Code.

(b) An insurer may make available professional liability insurance covering a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person is acting in the course and scope of the person's duties as a volunteer health care provider as described by Chapter [84](#), Civil Practice and Remedies Code.

(c) This section does not affect the liability of a volunteer health care provider who is serving as a direct service volunteer of a charitable organization. Section [84.004\(c\)](#), Civil Practice and Remedies Code, applies to the volunteer health care provider without regard to whether the volunteer health care provider obtains liability insurance under this section.

(d) An insurer may make professional liability insurance available under this section to a volunteer health care provider without regard to whether the volunteer health care provider is a "health care provider" as defined by Section [1901.001](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 3B.036(a), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 9.036(a), eff. September 1, 2007.