

the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements Texas Family Code §264.755 and SB 1 (85th RS).

§700.1011. *Are there additional eligibility restrictions for the annual reimbursement?*

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

Filed with the Office of the Secretary of State on June 8, 2017.

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Audrey Carmichael

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-4760



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §218.61

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 218, Motor Carriers, Subchapter E, Consumer Protection, §218.61, Claims.

EXPLANATION OF PROPOSED AMENDMENTS

Proposed amendments to §218.61 increase the protection for consumers and modify the language for consistency and clarity.

An amendment proposes to eliminate one of the two exceptions to the requirement for a household goods carrier to issue an acknowledgment letter to its consumer who files a claim. The acknowledgment letter includes important information to educate the consumer about the consumer's rights, the department's toll-free consumer helpline, the claims process, and deadlines regarding the claims process. The current exceptions to the requirement for the household goods carrier to issue the acknowledgment letter within 20 days after receipt of a claim are: 1) the claim has been resolved; and 2) the household goods carrier has initiated communication with the claimant regarding the claim. An amendment proposes to eliminate the exception for initiating communication. What constitutes "initiating communication" is often difficult to define and does not ensure that the consumer receives necessary information to protect the consumer's rights. For example, if the household goods carrier "initiates communication" by leaving a voice mail that says it called about the claim, this action provides no protection for the consumer and should not excuse providing the acknowledgment letter to the consumer.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

William P. Harbeson, Director of the Enforcement Division, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be greater protection for consumers who use the services of household goods carriers. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on July 24, 2017.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§218.61. *Claims.*

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic format with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier or its agent. A shipper must file a claim either in writing or by electronic format within 90 days:

(A) of delivery of the shipment to the final destination;

or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send an acknowledgment of the claim either in writing or by electronic format to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or its [his] agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the Texas Department of Motor Vehicles (TxDMV), Enforcement Division, via the toll-free consumer helpline as listed on the department's website. Additionally, a claimant has the right to request mediation from TxDMV within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved [~~or the household goods carrier has initiated communication regarding the claim with the claimant~~] within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim. However, the household goods carrier has the burden of proof regarding the resolution of the claim [~~resolution or communication with the claimant is the responsibility of the household goods carrier~~].

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through the Texas Department of Motor Vehicles (TxDMV) within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

(1) claim number (if assigned), date received, and amount of money or the requested remedy;

(2) number (if assigned) and date of the moving services contract;

(3) name of the claimant;

(4) date the carrier issued its claim acknowledgment letter;

(5) date and total amount paid on the claim or date and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.

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

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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

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