THOMPSON COE

2009 LIFE & HEALTH INSURANCE LEGISLATION IN TEXAS

CONTENTS

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The Texas Legislature began its 81st legislative session in January 2009 and concluded the session on June 1, 2009. Thompson Coe attorneys were involved in representing various individual insurance clients and the Texas Association of Life and Health Insurers (TALHI) on a broad spectrum of issues impacting life and health insurance. During the 81st session, the legislature considered over seven thousand bills, with approximately twelve hundred being insurance related. Jay Thompson and Albert Betts were directly involved in working over 298 bills that were identified to have some impact on the life and health insurance industry. A total of 51 bills were passed into law, including affirmative legislation that was sponsored by TALHI. This newsletter will summarize the new laws and provide an insight into future rules and regulations necessary to implement the changes.

The legislative session started with a great deal of turmoil because of debates over Voter ID and the election of a new speaker. Insurance was a front-burner issue because of the need to provide funding for the Texas Windstorm Pool and the fact that both the Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) were scheduled for a Sunset review. Under the Texas Sunset law, an agency subject to Sunset review must be extended by legislation or the agency goes into a one-year wind-down period. Sunset legislation offers a lot of opportunities for amendments that could change the law in all lines of insurance.

The Sunset bills for both TDI and OPIC did not pass due to the delay in the House over the Voter ID bill.

In order to continue both agencies beyond 2010, the Governor called a special session beginning July 1, 2009 to address revised Sunset dates for these agencies and others as well as funding issues for the Texas Department of Transportation. In the special session, the legislature passed Senate Bill 2 revising the Sunset review dates for the TDI and OPIC to 2011. The Governor signed the bill on July 10, 2009.

For both TDI and OPIC, the Sunset Advisory Commission's recommendations will continue and will be reviewed by the Sunset Commission prior to the 82nd legislature in 2011.

Important changes to the leadership and composition of the House had an impact on the legislative process and debate on insurance-related bills. Representative Joe Straus (R-San Antonio) was elected Speaker and he made several changes to the composition of several important committees, including chairs and memberships.

The House Insurance Committee was again chaired by Representative John Smithee (R-Amarillo) which heard most of the insurance-related bills in the House. Most legislation impacting life and health insurance was heard in the Senate State Affairs Committee, chaired by Senator Robert Duncan (R-Lubbock).

During the regular session, numerous health insurance bills did not pass but generated significant debate and likely will be considered in the next legislative session. This includes legislation impacting policy rescission and cancellation; the display of medical loss ratios on the policy or on a disclosure label; allowing OPIC to litigate on behalf of individual employees or employers in small employer group rate increases; limiting the rights of health insurers to subrogation in personal injury cases; regulation of silent PPOs or network providers; and regulating commissions in the sale of annuities.

This report includes those bills considered to have a direct impact on the insurance industry. We publish separate newsletters for property and casualty insurance and life, health and accident insurance bills.

This report provides a brief summary of the bills along with the effective date for each bill. Many bills may have different effective date for various sections of the bill. Where possible, the summary references any dates for operational changes or applicability of a new law.

This report is not intended to give legal advice nor should it be relied upon as a complete representation of the law. Any decision to act or not act should be made only after thorough review of the legislation and after consulting with legal counsel.

Also, although the legislature has passed a bill, the state agency responsible for administering the law may still be required to adopt administrative rules to implement the passed bill. We urge you to also pay close attention to the rule-making process that will occur over the new few months at the Department of Insurance.

Life/Health/Annuities

Officer Compensation

HB 651 Compensation. The bill increases limits on compensation for officers, directors, and employees of domestic life, health, and accident companies from $100,000 to $150,000. The Governor signed the bill on May 23, 2009; and it is effective September 1, 2009.

Benefits and Coverage

HB 451 Autism Coverage. Current law requires insurers to cover expenses for autistic children between the ages of three and six. HB 451 amended Sec. 1355.015(a), Insurance Code, to extend health insurance coverage for autism treatment from the time of a child's diagnosis through their ninth birthday. The bill also extended the mandate to certain state and public plans identified in the Insurance Code. Effective September 1, 2009.

HB 582 State Employee Benefits. This bill amends the state employees group benefits act to permit a parent or guardian of a child no longer eligible due to termination of state employment to be informed that the child may be eligible to receive similar benefits under the child health plan program. Effective May 23, 2009.

HB 806 Coverage for Prosthetic Devices. HB 806 adds a new mandate in Chapter 1371 of the Insurance Code requiring coverage for orthotic and prosthetic devices. This is a broad mandate that applies to individual and group plans. Consumer Choice plans are not specifically included. Coverage is required that equals the coverage provided under federal laws for health insurance for the aged and disabled. The plans can require prior authorization for the devices. Subject to applicable copayments and deductibles, the repair and replace of a prosthetic device is a covered benefit. Coverage cannot be subject to annual dollar limits but can be subject to annual deductibles, copayments, and coinsurance for other coverage consistent with such annual limits. The bill is effective for policies issued or renewed after January 1, 2010. Effective September 1, 2009.

HB 1290 Coverage for Bariatric Surgery and Cardiovascular Disease. This legislation expands access to medical screenings to increase the early detection of diabetes or cardio- vascular disease. The bill provides coverage under certain health benefit plans for specified tests for the early detection of cardiovascular disease. The bill covers men older than 45 and younger than 76 and women older than 55 and younger than 76 who are diabetic or are at intermediate or higher risk of heart attack, according to a score using the Framingham Heart Study coronary prediction algorithm. The coverage provides for either computed tomography (CT) scans measuring coronary artery calcification or ultrasonography scans measuring carotid intima-media thickness and plaque once every five years with minimum coverage of up to $200 per test. This mandate is applicable to group and individual health plans. It is not applicable to the "Consumer Choice" plans or to certain specific disease or other limited benefit plan policies.

Amends Chapter 1551, Insurance Code, relating to the Texas Employees group benefits act, and requires the board to develop a cost-neutral or cost-positive plan for providing under the group benefits program bariatric surgery coverage for employees eligible to participate in the program under Section 1551.101. Effective September 1, 2009.

HB 1364 Group Health Plans for School Districts. Amends the Education Code concerning group health benefit coverages offered through a school district or to school district employees. Effective September 1, 2009.

HB 2000 Amino-Acid Based Formula Mandate. This bill adds new Chapter 1377 to require coverage for certain amino acid-based elemental formulas. Coverage is required for individual and group health plans to require coverage for amino acid-based elemental formulas used to diagnose and treat certain identified diseases if the treating physician says it is medically necessary. Allows a Utilization Review to review the doctor's determination of medical necessity. The mandate does not apply to certain limited benefit and specific disease policies or long-term care. It is not applicable to Consumer Choice Plans under Chapter 1507, Insurance Code. Effective September 1, 2009.

SB 39 Mandated Coverage for Clinical Trials. This bill is similar to a bill filed by Senator Zaffirini in 2007 that requires coverage for routine patient care cost for individuals without regard whether they are participating in a clinical trial. The mandate applies to individual and group health plans including certain state and political subdivisions such as school districts. There is language in the bill that excludes the mandate for limited benefit or specified disease policies including long-term care. Coverage is not required for Consumer Choice plans. Routine patient care cost would not include the cost of an investigation on a new drug; cost of a service that is inconsistent with accepted standards of care for a particular diagnosis; cost associated with managing the clinical trial or a cost that is specifically excluded from coverage. Benefits must be paid to an enrollee in connection with a Phase 1 through Phase 4 clinical trial if it is conducted in relation to the prevention, detection or treatment of a life-threatening disease or condition. The clinical trial must be approved by certain designated entities. Research institutions are not required to be reimbursed unless they agree to accept rates that are established by the healthcare plan. It also does not require a health benefit plan issuer to provide benefits out of network unless out-of-network benefits are otherwise provided. The bill provides that the issued health benefit plan may not cancel or refuse new coverage solely because an enrollee participates in a clinical trial. Effective September 1, 2009.

SB 1291 Access to Counselors and Therapists. This bill amends various sections in Chapter 1451, Insurance Code, to delete the requirement in health insurance policies that services of a licensed counselor or therapist be recommended by a physician. Effective September 1, 2009.

SB 1479 Exemption from Mandates for Certain Limited Benefit Policies. This bill adds a new Chapter 1425 to the Insurance Code to provide an exemption from mandates adopted on or after January 2, 2010, unless the mandate is specifically provided by law to the plan or policy described in Chapter 1425. The types of plan and policies include specified disease, accidental death, dental or vision, disability income, credit insurance, hospital confinement, medical supplemental policies, workers compensation, long-term care, med payments under an auto policy, occupation accident, and long-term care. Effective May 27, 2009.

SB 1771 Availability and Continuation. This bill adds Chapter 1202A to the Insurance Code to align the state laws regarding continuation of insurance coverage after employment, with the federal law. The law changes the continuation coverage period for employers with less than 20 employees from the current 6 months to 9 months as provided under federal COBRA law. A 2009 federal law allowed for 65% assistance for COBRA and state continuation programs. This bill allows affected employees to participate in the federal premium assistance program and requires employers to provide notice of the program to the employees. Effective June 19, 2009.

Agents

HB 739 CE Requirements for Agents Selling Medicare-Related Products. HB 739 added a new Subchapter D to Chapter 4004 that requires agents selling medical advantage and medicare related products to have four (4) hours of continuing education during the agent's two year licensing period that specifically relates to medicare related products. The continuing education requirements can be part of the 15 hour requirement in current law. Effective September 1, 2009.

HB 1757 License Exam Pass Rates. Requires the TDI or its contracted vendor to review a license exam for a single or limited lines insurance examination if the overall pass rate is less than 70% for first time examinees. This includes Limited Property and Casualty License, Personal Lines Property and Casualty Agent, Property and Casualty Agents, and Limited Life, Accident, and Health License, Life Agent, Life, Accident, and Health Agents. The TDI would also collect demographic information on examinees. The TDI has to issue an annual report based upon its review of the license exam results. Effective June 19, 2009.

HB 2456 Sale of Annuities. This bill is primarily aimed at life agents selling annuities, however, it contains broad provisions that could also apply to a property casualty agent. The bill amends Section 4001 to require an agent to possess a certificate to sell a designated product or line if required by rules adopted under Chapter 4008.

Amends Chapter 4004 to require the TDI to administer CE and pre-certification training programs subject to rules adopted under Chapter 4008. Allows the TDI to enter into contracts with an independent contractor for CE and training programs.

Adds Chapter 4008 to require supplementary certification and education for certain complex products. Allows the commissioner to adopt rules to require certification before selling a product designated by the commissioner. The commissioner, by rule, designates the products or product lines that cannot be sold without this certification. The training, exams, and experience requirements are in addition to other such requirements. Effective June 19, 2009.

SB 79 Specialty Certification for Agents Serving Small Employers. This bill adds a new Subchapter H to Chapter 4054, Insurance Code, to require a voluntary specialty certification program for individual agents who market small employer

health benefit plans. Certification is allowed after completion of a course and passing an examination unless the individual is a Registered Health Underwriter (RHU); Certified Employee Benefit Specialist (CEBS); or Registered Employee Benefits Consultant (REBC). Individuals certified must agree to market to employers without regard to the number of employees covered under the plan. Rules implementing this legislation are required to be adopted before January 1, 2010. Effective September 1, 2009.

Pharmacy Benefits

HB 1138 Required Information for Pharmacy Benefit Cards. This bill amended Chapter 1369, Insurance Code, to apply the requirements to certain state plans. It also amends Sec. 1369.153 to delete the requirement that a "logo" be on the benefit card. Identification information on the front of the card must include identification for the enrollee (except for social security number) and bank information sufficient to permit electronic billing. The logo of the pharmacy benefit administrator is required if the entity is different than the health benefit plan issuer. Rules adopted by the Commissioner must be consistent with national standards established by the Workgroup for electronic Date Interchange or other similar organization. Effective September 1, 2009.

HB 4402 Study on Pharmacy Benefit Managers. This bill requires the TDI to study how pharmacy benefit managers (PBMs) use prescription information to manage drug switches and substitutions. The report is due to the legislative leadership by August 1, 2010. Effective September 1, 2009.

Annuities

HB 1293 Annuity Disclosure Standards. This was a TALHI sponsored bill and based on a model regulation. The bill would have implemented new Chapter 1116 on Disclosure Standards for Annuity Transactions. As passed, the bill would have applied to all group and individual annuity contracts including certain registered or non-registered variable annuities, immediate and deferred annuities with no non-guaranteed elements, and annuities used to fund pension plans and other listed items. Would have required a disclosure document and Buyer's Guide to be given if the annuity contract is taken in a face-to-face meeting. Otherwise, the information is sent to the applicant no later than 5 days after receipt of the application. If the application is, via the Internet, making the Guide and disclosure document available for viewing and printing satisfied the requirement. If the Guide and disclosure statement are not provided, the applicant has a free-look period of at least 15 days to return the annuity contract without a penalty. The bill would have set the requirement for the information in the disclosure statement and required the insurer to provide an annual report on the status of the contract with certain required information. The bill required the insurance commissioner to adopt by rule Buyer's Guides for fixed, deferred and equity indexed annuities. A section of Chapter 1116 provided that a violation was a deceptive trade practice that would have allowed private causes of actions and thus the reason for the veto.

Other provisions in the bill would have clarified the Suitability provisions in Chapter 1115 to not apply to any life insurance or annuity used to fund prepaid funeral benefits; and permitted annuity exchanges between insurers in the same holding company group.

Unfortunately, the Governor vetoed this legislation. In the veto message, the Governor urged that this be passed by regulation.

HB 1294 Sale of Annuities to Seniors. This was a TALHI sponsored bill and based on a NAIC model regulation. The bill requires agents who sell annuities to include 4 hours of annual education related specifically to annuities in order to sell annuities in Texas. The commissioner by rule establishes the criteria for the education programs. The bill also added Chapter 1117 to the Insurance Code regarding senior-specific certifications or designations in the sale of annuities. Prohibits agents from using senior-specific designation or certifications in such a way as to mislead consumers if the agent does not have the certification, specialization, or designation. The bill allows for certification from certain recognized organizations. Effective September 1, 2009.

HB 1919 Annuity Maturity. The bill requires annuities with fixed maturity dates to adhere to a 70/10 standard, which is currently the standard for optional maturity date annuities. This means that the latest maturity date of the annuity will be set as the later of next anniversary of the annuity contract that follows the annuitant's 70th birthday or the 10th anniversary of the purchase date. The bill deletes existing language in Insurance Code §1107.006 prohibiting a maturity date determined under this section from being later than the later of the next anniversary of the annuity contract that follows the annuitant's 70th birthday, or the 10th anniversary of the contract. Effective September 1, 2009.

HB 4492 Registered Annuities. This was a TALHI sponsored bill. This bill amends the suitability provisions in Chapter 1115 to provide a safe harbor for compliance with Financial Industry Regulatory Authority for annuities registered under the Securities Act of 1933. (15 USC Sec. 77a). Effective September 1, 2009.

Regulatory

HB 1342 Use of Information Technology. Adds a new chapter to the Insurance Code, Chapter 1661, and requires health benefit plan issuers to use information technology to provide physicians, hospitals, or other health care providers with real-time information at the point of service. The bill also requires health providers to use information technology to provide enrollees with information concerning the enrollee's co-payment and co-insurance, deductibles, covered benefits and services and estimated financial responsibility. Health plans can meet the requirements of the bill through the use of their Internet website. Exempts health plans and providers with fewer than 5 employees.

Health care providers and physicians can request a waiver from the technology requirements but the commissioner by rule has to identify the conditions qualifying for a waiver. In addition, a health plan issuer can request a waiver from the TDI.

Requires health care providers to use the information technology required by this law beginning not later than September 1, 2013. Effective May 30, 2009.

HB 1358 Cancer Prevention Institution. The 80th Legislature, HB 14 created the Cancer Prevention and Research Institute of Texas. This bill changes the composition and functions of certain committees of the Institute. The Institute awards grants for cancer research and education, and the bill revises the process for awarding grants and sets certain oversight requirements for grant recipients. Effective June 19, 2009.

HB 1761 Credit Life and Disability Reserves. This was a TALHI sponsored bill that changes the method for calculation of reserves for credit life and disability. Under current law, reference is made to an NAIC mortality table. This bill permits the Commissioner to adopt minimum reserve stands by rule if based on adopted NAIC tables. Separate tables are referenced for credit life and disability reserves. This bill is effective for policies issued on or after January 1, 2009. Effective June 19, 2009.

HB 1888 Physician Ranking by Health Plans. Adds Chapter 1460 to the Insurance Code and establishes standards for physician ranking systems used by health care plans and insurance companies. Requires the use of nationally recognized standards as determined by the commissioner in rule. The commissioner has to consider guidelines established by health care organizations such as the National Quality Forum and AQA Alliance and others listed in the statute. Insurers would have to disclose to health care providers the measures to be used prior to their implementation. Providers would be allowed to dispute any ranking prior to its publication and have a review either in person or via teleconference. There were other similar bills filed, HB 1392 and HB 4289 which would have adopted a different physician appeals process. Effective September 1, 2009.

Health plans have to comply no later than January 1, 2010. The bill's effective date is September 1, 2009.

HB 2570 Stipulated Premium Regulation. This was a TALHI sponsored bill and changes regulatory requirements for stipulated premium insurance companies. Stipulated premium insurance companies primarily sell life insurance policies that are used to fund pre-need funeral contracts. The bill amends Insurance Code section 884.054 by increasing stipulated premium company's capital stock from $15,000 to at least $200,000. Also increases the amount of surplus for an applicant to possess in addition to its capital, surplus in an amount of at least $75,000, rather than $7,500 as currently required under the Insurance Code.

Amends Section 884.205 to require a stipulated premium company, if one-third or more of the company's stock becomes impaired, to correct the impairment within 60 days reducing the company's capital stock.

The bill also increases the amount for which a stipulated premium company can insure from $15,000 to $25,000 and amends Insurance Code (section) regarding agents to allow them to sell at the increased limit. Effective September 1, 2009.

HB 2690 Group Life Policies. This was a TALHI sponsored bill that amends Texas law to conform to the NAIC model law on group life insurance. The primary change is to permit a policy to be issued to trustees of a fund either established "or adopted" by two or more employers, unions, etc. Effective September 1, 2009.

HB 3221 Automatic Premium Increases. This bill amends section 550.002, Insurance Code, by requiring insurers to provide mail notice of premium increases when premiums are being paid automatically through an account withdrawal, es-

crow, or other means. The bill sets certain requirements for the notice including the insurer's toll free number and mailing address, among others, to allow the policyholder to object to the increase. The insurer can increase the premium if no objection is received 5 days prior to the increase taking effect. Effective June 19, 2009.

HB 4291 Process for Denial of Company Applications. This is a TDI recommended bill. It permits denial of applications for certificates of authority and requires a hearing to be held after a denial, if requested by the entity making application for a license. Effective June 19, 2009.

HB 4339 Unauthorized Guaranty Fund. Creates a guaranty fund for use by a receiver to reimburse consumers who purchase insurance through an unauthorized insurer and are left with unpaid claims. This bill implements a legislative recommendation made by the TDI prior to the 81st session. The funds come from administrative penalties collected by the TDI under Chapters 101 (unauthorized insurance) and §861.702 (regarding penalties against unauthorized general casualty companies); civil penalties under Chapter 101; penalties for authorized insurers who engage in business outside the scope of their authorization or who use unapproved forms, rates, or advertisements; or bonds forfeited by alleged unauthorized insurers in legal actions brought by the TDI.

The commissioner has rule-making authority and some discretion in determining the amount of penalties collected to be deposited into the fund depending upon the anticipated needs of the fund. The commissioner may also advance funds from the unauthorized fund if the assets of the unauthorized insurer are insufficient to pay administrative costs and policy claims. Effective June 19, 2009.

HB 4341 Discount Health Program Regulation. The 80th Legislature enacted H.B. 3064 to regulate discount health care programs at the Texas Department of Licensing and Regulation. This bill moves the regulation of discount health programs to the TDI. Amends Insurance Code Chapter 562 to prohibit certain misrepresentations regarding discount health care programs or false advertisements, including representing that the program is "TDI approved." Sets up certain duties for the programs including providing a toll-free telephone number and Internet website for program members to obtain information about the discount health care program and confirm or find providers participating in the program. Also, the program has to contract, directly or indirectly, with a provider or network offering discounted health care services.

Programs are required to obtain a surety bond in the amount of $50,000, unless otherwise authorized to operate as an insurer with a certificate of authority issued by the TDI. In addition to enforcement action by the TDI, the Attorney General may bring an action for deceptive or unfair acts under Chapter 562 or Section 17.46, Business & Commerce Code. Effective September 1, 2009.

HB 4358 Administrative Violations. This bill enacts a TDI legislative recommendation for the 81st session to allow the commissioner to determine by rule which administrative violations would be subject to specific fine amounts. Once adopted the rules would remove any discretion in the penalty amount for those violations identified in the rule. This bill is effective immediately upon the Governor's signature. Effective June 19, 2009.

HB 4519 Regulation of Independent Review Organizations. Amends section 4202.002 of the Insurance Code and requires the commissioner to adopt rules and standards for the regulation of independent review organizations (IROs) The regulations would prohibit, among other things, multiple IROs from operating out of the same office, shared ownership and directions of multiple IROs, and an attorney who served as a registered agent for an IRO from representing the IRO in legal proceedings. IROs are also required to be located in Texas and be certified. Effective September 1, 2009.

SB 1 TDI Interim Studies. This is the state's budget appropriation act, which includes the appropriations for all state agencies. The budget for the TDI includes certain studies the agency must conduct and report on prior to the next legislative session. These include a study on the what changes, if any, have happened to levels of coverage for homeowner's insurance since the use of approved national forms; a study on the use of data mining by insurers in all lines of insurance; and a study on accessibility and affordability of health benefit plan premiums for certain families. Effective September 1, 2009.

SB 78 TexLink and Healthy Texas. This bill amends Insurance Code Chapter 524 regarding TDI's health coverage awareness and education program duties and renames it the TexLink to Health coverage Program. The purpose of the program is to educate the public about health coverage and health coverage options. TDI would be required to engage in outreach efforts for the program and would work with the Health and Human Services Commission to disseminate information. The commissioner is authorized to create a task force to assist in creating the outreach effort.

A last-minute amendment also added the provisions of SB 6 that creates the Healthy Texas Program. New Chapter 1508 is added to the Insurance Code to establish the Healthy Texas Program. The Healthy Texas Program is designed to allow insurers to offer department-approved health insurance products for certain small businesses. The bill makes insurers responsible for all payments up to an annual threshold of $5,000 per individual and once that threshold is met, insurers

would be eligible for reimbursement in an amount equal to 80 % of the dollar amount of claims, up to $75,000 for each enrollee. The new Chapter has provisions relating to employer eligibility to participate, including the authority of the commissioner of insurance, by rule, to make certain adjustments, to minimum employer participation requirements, and employer contribution requirements. Provisions relating to coverage and benefits for participants under the program, including which health benefit plan issuers are authorized to participate in the program and the commissioner's authority, by rule, to limit participation and establish certain participation requirements, a required preexisting condition provision, an exception from mandated benefit requirements under Texas law, and the coverage prohibited or required of a qualified health benefit plan and the authority of the commissioner to make determinations regarding this coverage.

Chapter 1508 establishes the manner in which the program is administered, including employer certification of eligibility requirements; the application process; the initial enrollment period for employees under a qualifying health benefit plan; a waiting period established by a small employer; and the submission of reports by the participating health benefit plan issuer to the Texas Department of Insurance. The bill sets forth provisions relating to the rating of qualified health benefit plans, including the application of rating factors and information regarding premium practices in general, premium rate development and calculation requirements, and the filing and approval of rates by the commissioner. Effective September 1, 2009.

SB 698 Raced-Based Policies. Requires the TDI to create a registry of each insurer in Texas who entered an agreement with the TDI on race-based pricing and post the registry information on its website no later than January 1, 2010. The TDI is also required to maintain the records from the TDI review of race-based pricing practices in Texas. Effective September 1, 2009.

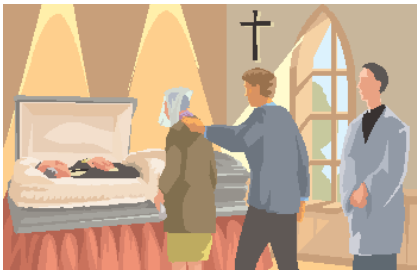
SB 963 Long-Term Care Premium Rates. This bill adds section 1651.056 to the Insurance Code to regulate long-term care rates and requires long-term care rates to be filed with TDI and approved by the commissioner prior to their use. Rates may be disapproved is not actuarially justified or in compliance with rating standards. If a rate increase is approved, the insurer would have to notify policyholders 45 days prior to the increased in premium payment under the newly approved rate. The bill requires insurers to provide contingent nonforfeiture benefits consistent with nationally recognized models adopted by the commissioner. Effective September 1, 2009.

SB 1143 Employer Liability for Premiums and Study. This bill amends Insurance Code Chapter 843 by requiring insurers and health maintenance organizations to insert a statement into monthly bills notifying an employer of the employer's liability for premiums on all enrollees until notification of termination is received by the insurer. The bill also requires insurers and HMOs to remind group contract holders of their liability for premiums of an enrollee who is no longer part of the eligible group until the employer provides notification to the HMO or insurer. This is a cleanup from prior SB 51 (2005 session) which made the employer liable for the premiums.

The bill is applicable to contracts entered into or renewed on or after January 1, 2010. Effective September 1, 2009.

Pre-Paid Funeral Benefits

HB 3762 Pre-Paid Funeral Regulation. Currently, pre-paid funeral benefits contracts are regulated by three different regulatory departments in an overlapping system, which often creates confusion and additional costs to the industry and consumers. Specifically, the TDI regulates insurance companies and insurance agencies in their conduct of the business of insurance, in accordance with insurance statutes; the Texas Department of Banking regulates entities that hold permits to sell pre-paid funerals, in accordance with Chapter 154 of the Finance Code; and the Texas Funeral Service Commission regulates funeral homes in their performance of funerals. HB 3762 amends current law relating to the regulation of pre-paid funeral benefits. This is especially true for insurance funded pre-paid funeral benefits. Policy forms used to pay pre-paid benefits will be approved by TDI and contains a notice that cancellation of a prepaid funeral contract does not automatically cancel the policy. The face amount of insurance cannot exceed the funeral benefits contract by more than 5% without disclosure and consent by the purchaser. Cancellation of a pre-paid funeral contract is permitted. Certain presale disclosures are required in the sale of pre-paid funeral benefits contracts. The Banking Department has to approve the disclosures and authority is also given to permit development of a model information brochure. Insurance funded policies cannot be assigned irrevocably except as required by the act. The bill creates separate guaranty funds for trust-funded contracts and insurance-funded contracts and provides for an assessment on the seller of each insurance funded policy of $1 per policy to build a fund up to $1M. The bill also creates an Advisory Council to administer funds authorized under the bill in order to pay claims for benefits to be provided by funeral providers to purchasers. Effective September 1, 2009.



Health Risk Pool

HB 2064 Premium Discounts in the High Risk Pool. This bill amends Chapter 1506 of the Insurance Code to provide for discounts of premiums for individuals with certain financial needs. For individuals whose household income is below 200 % of the federal poverty measure, the High Risk Pool premium shall equal the standard risk rate. For individuals below 300 % of the federal poverty measure, the High Risk Pool premium shall equal 140% of the standard risk rate. As filed, the bill permitted premium tax credits for the discount. As finally passed, however, the bill deleted tax credits and funded the discounts through "prompt pay" penalties. For institutional providers such as hospitals or medical or health–related service facilities, 50% of the prompt pay penalty in Chapter 843 for HMOs and Chapter 1301 for PPO Plans shall be paid to the High Risk Pool. For physicians and providers other than institutional providers, the entire penalty is paid to the provider except for interest which is paid to the High Risk Pool. The penalty payments are effective January 1, 2010 while the rate credits are effective on and after January 1, 2011. Effective January 1, 2010.

SB 1403 Texas Health Risk Pool. This bill amends Chapter 1506 to change the name of the Texas Health Insurance Risk Pool to the Texas Health Insurance Pool. The bill also amends other provisions of this Chapter to permit dependents to be eligible for coverage if they have been legally domiciled in Texas at least 30 days before the application and a citizen or permanent resident of the US for three continuous years. Effective September 1, 2009.

Health Care Networks

HB 2256 Mediation of Out-of Network Claims with Facility-Based Providers. This bill was an attempt to address the problem with balance bill. The bill adds new Chapter 1467 to the Insurance Code which provides for dispute resolution on out-of-network claims involving facility-based physicians and enrollees. It applies broadly to both insured and self-funded plans because of the inclusion of administrators in definition. Mediation is mandatory for unpaid disputed claims greater than $1,000. Except for emergencies, facility based providers must also disclose to enrollees that the provider does not have a contract with the health plan and disclose the circumstances under which the enrollee would be responsible for billed charges. Mediators must be qualified and are appointed by the Chief Administrative Law Judge from the State Office of Administrative Hearings (SOAH). Fees are to be split evenly between the insurer or administrator and the facility based physician. Collection efforts by a physician are delayed for an enrollee that has requested mediation. The mediation may consider whether amounts charged by the provider are excessive and whether amount paid or offered by the insurer or administrator are unreasonably low compared to the usual and customer charges. Unsuccessful mediations are reported to the TDI, the Texas Medical Board, and the Chief Judge at SOAH including "bad faith mediation" as defined in the bill. Bad faith includes failing to appear, failing to provide information, or failing to designate a representative with full authority to settle a dispute. Penalties for bad faith mediation are allowed. Effective June 19, 2009.

HB 4290 Retrospective Utilization Reviews. This bill amends various sections in Chapters 1305 and 4201, Insurance Code, relating to utilization review. Specifically, the bill amends provisions to define utilization review to expand the review beyond medical necessity to also include determinations of whether procedures were experimental or investigational. Utilization review is also amended to include retrospective reviews of these issues. Retrospective review decisions must be provided not later than 30 days after the date a claim is received. Effective September 1, 2009.

Privacy

HB 4029 Release of Health Care Information. This bill amends various sections in Health and Safety Code relating to public hospitals to better protect private information of individual patients. H.B. 4029 establishes that "payment information" is part of a patient's confidential health care information and, therefore, not subject to release without patient authorization. The bill conforms Texas law more closely to the definition of "protected health information" under the federal Health Insurance Portability and Accountability Act, which specifically includes information relating to payments for health care services. The bill will not change existing practices in Texas hospitals, but patients who receive services from public hospitals will have a level of privacy similar to that of patients who receive services from private hospitals not subject to public information laws. Effective September 1, 2009.

Physician-Related Legislation

HB 389 Expedited Credentialing. In 2007, the 80th Legislature passed HB 1594 in order to provide for an expedited credentialing of physicians joining an existing medical group that had been credentialed by a health care plan. The term "medical group" was not defined in that legislation. In 2009, HB 389 defined medical group to include a single legal entity owned by two or more physicians; a professional associated of licensed physicians; or any other business entity composed of licensed physicians. Effective September 1, 2009.

HB 3623 Physician Covenants Not to Compete. This bill amends the Business and Commerce Code to provide that the sections on covenants not to compete do not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center. Effective September 1, 2009.

SB 202 Provisional Medical Licenses. Allows the Medical Board to grant provisional licenses to applicants for Texas licensure who are licensed in other states and who are willing to practice in underserved areas as designated by federal or state government. Effective September 1, 2009.

Confidentiality of TDI Records

HB 4461 Confidential TDI Investigation. This was a TDI legislative recommendation. The bill makes TDI investigation files confidential and not a public record under the Public Information Act. The bill specifically excludes the fraud unit investigation information that is confidential under Chapter 701. Effective June 19, 2009.

SB 671 Legislative Request for Information. The bill amends Chapter 552 of the Government Code (the Public Information Act) by creating a process for a legislator, who has received information from a state agency that agency believes to be confidential, to request an Attorney General opinion as to whether the information is confidential. Agencies sometimes receive requests from members for information the agency believes to be confidential and the agency may require the member to sign a confidentiality agreement. The member now has the ability to obtain a ruling on whether the information must be maintained as confidential. Effective September 1, 2009.

TEXAS DEPARTMENT OF INSURANCE

Other Legislation

HB 3480 State Fund Investments. The bill provides safeguards to entities providing services for administration of a plan under 403(b) to be licensed by, or be regulated by the Texas Department of Insurance (TDI), the State Securities Board (SSB), and the Texas Department of Banking (TDB), respectively, and to require that representatives of other companies certified have the opportunity to attend and market qualified investment products. The bill would also allow TDI, SSB, and TDB to investigate any complaint received from TRS regarding this issue. The bill has provisions for fines ranging up to $1M, would be an effective deterrent to fraudulent activity. The bill also would increase 403(b) investment options by allowing TRS to certify other non-annuity investment programs, such as mutual fund platforms. Effective September 1, 2009.

SB 80 Employer Contributions on Small Employer Plans. This bill amends Section 1501.153, Insurance Code, to permit a small employer insurer to offer plans for which the employer is required to contribute 100% of the premium paid. Effective September 1, 2009.

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