



## TEXAS DEPARTMENT OF INSURANCE AND OFFICE OF PUBLIC INSURANCE COUNSEL SUNSET REVIEW

The Center for Public Policy Priorities (CPPPP) appreciates this opportunity to provide testimony on the Texas Department of Insurance (TDI) and Office of Public Insurance Council (OPIC) Sunset reviews. As the Sunset staff report notes, the new federal health reform law will significantly change the health insurance market in the next few years. Changes must occur at TDI and OPIC as well, as the state takes on new roles and functions necessary to successfully implement the health reform law. The Sunset process provides an opportunity for legislators and the public to rethink the roles of these vital agencies and give them the tools needed to protect consumers and foster competition in a changing health insurance market.

Much of the work of implementing the Patient Protection and Affordable Care Act, or federal health reform law, will happen at the state level. The Texas Legislature and state agencies will play central roles in shaping access to insurance for Texas residents. Texas House and Senate committees have already held interim hearings to begin determining what work Texas must do to implement health reform. Whether the Sunset Commission decides to actively engage in preparing TDI and OPIC to implement health reform or leaves this work to interim committees, the Commission should be mindful of the agencies' new roles and responsibilities as it debates how to equip TDI and OPIC to protect insurance consumers moving forward. The following selected provisions from the health reform law provide examples of new roles that TDI and OPIC must play as our private health insurance marketplace evolves into one that covers many more Texans and includes market reforms that provide better access and consumer protections to policyholders.

- **Consumer Ombudsman's Office (starting in 2010).** Health reform allocates grant funding for states to start or expand consumer ombudsman programs. The health reform law assigns this office several functions:
  - Educates consumers on health insurance rights and responsibilities;
  - Helps consumers file insurance related appeals and complaints;
  - Helps consumers enroll in health plans;
  - Resolves problems for individuals and small businesses in obtaining tax credits; and
  - Collects, tracks, and reports consumer problems and inquiries.

The functions of this office are paramount for consumers, who have many new rights and responsibilities under health reform. Neither TDI nor OPIC perform the functions required of an ombudsman's office today. The health reform law requires the office to be "independent" and to work with the insurance regulatory agency. Until federal guidance is available, it will remain unclear whether TDI can house this function. Regardless of

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whether OPIC, TDI, or another Texas agency ultimately performs this function, the responsible agency will need, at a minimum, trained staff who can resolve consumer's issues, a phone system sufficient to take toll-free calls from around the state, a website through which education and assistance is provided, and statutory authority to help enroll Texans in coverage and resolve their issues related to private health insurance. The health reform law appropriates \$30 million for grants to states in 2010 and authorizes funding as needed in subsequent years.

- **Rate review (starting in 2010).** Currently, health plans must file rates with TDI for only a small fraction of the major medical health insurance market: policies sold in the individual market and HMOs. These rates are filed for information only. TDI lacks the authority held in most states to reject excessive rates in the individual or small group health insurance markets (but, TDI has such authority for auto and homeowners insurance rates). The health reform law establishes an annual state-federal rate review process for unreasonable increases starting this year. Full details on TDI's role in this process will not be known until federal regulations are finalized, but since TDI does not engage in rate review today, it is already clear that TDI will need significant new capacity to: (1) receive rate filings from much of the market, (2) review health insurance rates, and (3) identify unreasonable premium increases. National health reform appropriates \$250 million in grants over five years to help states conduct rate review. TDI should seek this funding, and if it qualifies, will receive at least \$1 million and up to \$5 million a year to enhance rate review activities. It is possible that TDI will also have to implement changes in statute and develop new rules to implement this new function.
- **Early market reforms (effective September 23, 2010).** The health reform law makes many improvements to coverage starting this year, including:
  - Prohibiting lifetimes limits;
  - Allowing young adults to stay on their parent's coverage until age 26;
  - Prohibiting denials of coverage for children with pre-existing conditions;
  - Prohibiting rescission, the retroactive cancellation of coverage generally triggered when an enrollee generates claims;
  - Strengthened internal and external appeals processes.

TDI will need to enforce these new requirements in Texas. It must review new policy form filings and monitor the market to ensure compliance with the new requirements. TDI must work with the Legislature to ensure state laws are brought into compliance with federal laws and update regulations. TDI must also provide consumer assistance and education related to new market reforms.

- **Grandfathered plans (starting in 2010).** The health reform law "grandfathers" health plans in existence as of the date of enactment, March 23, 2010. Grandfathering allows individuals and employers happy with their existing coverage to keep it. At the same time, it means some consumers will not have access to all of the new market reforms and benefits under health reform. For TDI, it means having to oversee dual markets, one for plans that are grandfathered and another for plans that must comply with all changes in health reform. TDI staff will not only have to be able to distinguish these plans and separately enforce applicable laws, they must help Texas consumers understand a confusing market where not all of the new rules apply to all of the plans.

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- **Health insurance exchange (work must start soon to make the exchange operational by January 1, 2014).** Health reform creates new state-based exchanges, or organized marketplaces where individuals, small employers, and members of Congress will compare options and purchase health insurance. Premium and cost-sharing credits will be available for low- and moderate-income families purchasing through the exchange. The health reform law outlines many general functions of an exchange and provides funding to states to get exchanges up and running, but many decisions about an exchange's structure and function are left up to states.

Creating and operating an exchange is one of the most significant state responsibilities under health reform. One of the first decisions Texas must make is where to place the exchange. The health reform law allows a state agency or non-profit organization to operate the exchange. Should TDI be selected to run the exchange, it will need significant new staffing and information technology resources, as well as a new strategic direction and authority to promote and enroll Texans in health coverage. Regardless of which entity operates the exchange, TDI will be instrumental in developing new statutes and regulations needed for the exchange and will oversee health insurance markets that operate inside and outside of the exchange.

The list above has just a few examples of health reform law provisions that will require TDI and/or OPIC to assume new roles and responsibilities related to private health insurance coverage in Texas. Given the scope of the health reform law and the many new functions the state must assume because it has not yet focused on creating a consumer-friendly private market, Texas has its work cut out. Texans will be best served by relevant legislative committees working in good faith to prepare Texas to implement health reform in an effective and efficient manner.

To assist TDI with the substantial work that must be done to implement health reform, the Sunset Commission should create a workgroup or advisory committee with broad stakeholder representation including OPIC. TDI generally does a good job of working with stakeholders and soliciting their input. Given that health reform will affect almost every Texan in some way, it will be important that TDI have an open and inclusive stakeholder process for health reform implementation.

CPPP has the following comments on certain Sunset staff recommendations:

- **TDI Issue 9.1.** CPPP agrees that Texas has a continuing need to regulate insurance to protect consumers and that TDI is the appropriate agency to perform insurance regulatory functions. Given the scope of changes facing TDI through federal health reform, it may be appropriate for the Sunset Commission to continue the agency for six years, instead of 12 years, in order to re-examine the agency after the significant market reforms take effect in 2014.
- **TDI Issue 9.2.** CPPP supports the recommendation to add consumer protection and ensuring fair competition to TDI's statutory mission; however, the staff recommendation stops short of the changes needed to update TDI's statutory duties. We recommend that a third bullet be added to TDI's statutory duties in issue 9.2 that reads "ensuring consumer have access to high-quality insurance products at reasonable rates."
- **OPIC Issue 1.1.** CPPP strongly supports the staff's recommendation to continue OPIC as an independent agency. OPIC's independent representation of consumers as a class is vital for balanced insurance regulation by TDI. Insurers use attorneys, actuaries, and other professional when representing their interests to TDI. Consumers also deserve to have their interests represented by experts and professionals that are independent of TDI. OPIC fulfills this important role. OPIC's role will become even more important with health reform as

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Texans gain new rights and responsibilities related to insurance and millions of uninsured Texans gain coverage in the private market.

Thank you for the opportunity to provide input.

Sincerely,

A handwritten signature in black ink that reads "Stacey Pogue". The signature is written in a cursive, flowing style.

Stacey Pogue  
Senior Policy Analyst