



COMMENTS TO TDI ON HEALTHY TEXAS RULES

With more than 6 million Texans lacking health insurance coverage and the cost of coverage growing much faster than incomes, Texas needs to take bold steps to confront barriers to health coverage. Healthy Texas, a new public “reinsurance” program authorized by SB 78 and under development by the Texas Department of Insurance (TDI), has the potential to put private health insurance coverage within reach of many uninsured Texans by addressing the primary barrier to coverage—the high cost of premiums—using public-private partnerships. The overall goals of Healthy Texas are commendable. To help the program live up to its goals, a few provisions in the proposed rules related to continuation rights, medical underwriting, and payroll supporting documentation should be modified. CPPPP submitted the comments below on the proposed Healthy Texas rules to the Texas Department of Insurance.

Thank you for the opportunity to provide comments on the Healthy Texas rules. Our primary concerns as noted below relate to continuation provisions, medical underwriting, and payroll supporting documentation. We appreciate the changes that TDI made to draft rules in response to our informal comments. In addition, we appreciate TDI’s commitment to an ongoing Healthy Texas stakeholder process, and look forward to continuing to participate in that process.

Primary Concerns

Continuation Provisions

Sec. 26.514(e), which exempts Healthy Texas coverage from continuation rights should be removed. The inclusion of this provision conflicts with the goal of the Healthy Texas program to expand access to small employer health benefit plans. COBRA and state continuation should apply in Healthy Texas as they do in the existing small employer market. We understand that because Healthy Texas is appropriated funding on a two-year cycle, the continuation of the program cannot be guaranteed, but that alone cannot justify removing continuation rights. Continuation rights incorporate similar changes in the market today—a health plan’s participation in the market and an employer’s choice to maintain coverage are not guaranteed—but continuation rights exist if the employer continues to offer coverage. Healthy Texas enrollees should have the right to continuation when laid-off, leaving a job, divorcing, etc. as enrollees in other small employer plans.

Payroll Supporting Documentation

TDI incorporated several comments made the center and other stakeholder related to creating a simple structure for verifying employee’s income for Healthy Texas eligibility. The published rules are an improvement over draft rules in this area; however, several references to supporting documentation remain. The center believes that the best approach to eligibility verification would be to follow Healthy New York’s example and require that the small employer indicate compliance with each eligibility criterion on the application and certify subject to penalties that the information in the application is true. Putting the onus on the small employer to certify eligibility will make the role of verification easier to administer for health plans, which will just need to make sure the right boxes are checked and the certification signed. Not only will eligibility determination be faster and simpler with this type of certification, eligibility verification processes would be uniform across all

participating health plans. Avoiding inconsistencies in eligibility verifications across health plans is critical to ensuring appropriate and uniform access to the program.

An early draft version of a Healthy Texas application distributed by TDI staff at a stakeholder meeting incorporated an employer certification based on Healthy New York's, and this concept is incorporated in the rules in secs. 26.512(d) and 26.513(b). In this certification structure, there would be no need for employers to submit payroll/income supporting documentation to health plans. If TDI pursues this structure, all references to "supporting documentation" should be removed, since none will be required. Changes would be required to secs. 26.512(c) and (g), 26.52(j), and 26.522(b).

Alternately, if TDI intends to require that small employers submit payroll documentation to health plans for verification, TDI must clearly define for small employers and health plans what supporting documentation is "necessary and sufficient to verify income." This clarification could be in the RFP/health plan contracts or rule. Without this clarification, each participating health plan could develop different documentation requirements, some of which require little documentation and others which are overly burdensome on small employers and their employees.

Rating Criteria

We believe that sec. 26.551(a) was strengthened with the inclusion of language limiting rating *case characteristics* to age and gender; however, the rating section still fails to clearly state that no rating on *risk characteristics* (medical underwriting) is allowed. TDI has been very clear throughout the process that medical underwriting would not be a part of Healthy Texas, but the rules are silent on this important provision. The prohibition of medical underwriting is one of Healthy Texas's greatest strengths. It will attract new employers to the market, make the program easier and less costly to administer, allow small employers to use a simple rate chart to determine premiums, spread risk more effectively, and reduce the significant variation in premiums found in the commercial market today. Because a prohibition on medical underwriting represents a substantial difference in regulation compared to the current small group market, it should be clearly stated in rule. Since by statute TDI would have to go through rulemaking to add additional rating criteria as allowed in TIC sec. 1508.202(d), it makes sense to prohibit rating on risk characteristics in rule now and establishes the agency's intention to establish and adjust rating criteria through a public rulemaking process. If the rules remain silent on medical underwriting, it is unclear how participating health plans will interpret their ability to use medical underwriting and what ability TDI would have to reject rates set using medical underwriting.

Additional Comments on the Draft Rules

- Sec. 26.522(a) notes that to qualify for coverage, eligible employees must satisfy income criteria. Employees are not individually eligible for Healthy Texas; small employers are. We suggest that the language be changed to something like, "To qualify for coverage under the Healthy Texas Program, *small employers must have* eligible employees *that as a group*, satisfy the income criteria..."
- We are pleased to see and fully support language in the following sections:
 - Sec. 26.512(d), which allows TDI to promulgate standardized applications and notification of incomplete applications that must be used by health plans.
 - Definitions in sec. 26.521(k), which will allow small employers to participate in Healthy Texas if they made no more than a *de minimus* contribution toward coverage or provided a "mini-med" plan.
 - Sec. 26.521(i), which notes that mid-year fluctuations in group size, wage levels, and employee participation cannot disqualify a small employer.

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- Sec. 26.551(a), which notes that rates must be filed for review and approval and that age and gender are the only case characteristics that can be used for rating.

Thank you for your consideration of these comments.