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Senate Government Organization

## SENATE BILL (SB) 644 – TDI SUNSET BILL

As the overseer of the insurance market in Texas, the Department of Insurance plays a critical role for the state and its citizens. With one in four Texans lacking health insurance coverage and the cost of coverage increasing many times faster than incomes, the high cost of health insurance or lack of coverage is something that affects each of us and our communities. The Affordable Care Act, or national health reform, will significantly change the health insurance market over the next few years, increasing both access to and affordability of health insurance, especially for people who do not have access to job-based insurance. Changes must occur at the Texas Department of Insurance (TDI) as well, as the state takes on new roles and functions necessary to successfully implement the Affordable Care Act (ACA). The Sunset review process provides an opportunity for legislators and the public to rethink the vital role of TDI and give it the tools needed to protect consumers and foster competition in a changing health insurance market.

- **TDI’s continued regulation of insurance is necessary for consumer protection.**
- **TDI’s statutory duties should include protecting consumers, ensuring fair competition, and ensuring access to high-quality insurance products and reasonable rates.**
- **To ensure TDI can enforce consumer protections, Texas should adopt conforming laws for ACA reforms that have already taken effect (young adult coverage to age 26, no pre-existing conditions for kids, etc.). Federal enforcement may result if TDI authority is not enacted.**

### TDI Plays a Necessary Role

Texas has a need to regulate insurance to protect consumers. We support provisions in Senate Bill (SB) 644 that reauthorize TDI for another 12 years.

### Statutory Duties Should Include Consumer Protection

We also support provisions in the bill that will add consumer protection and ensuring fair competition to TDI’s statutory duties. This section could be strengthened by adding an additional duty to ensure consumers have access to high-quality insurance products at reasonable rates. Taken together with existing statutory duties to regulate insurance and enforce insurance laws, the expanded duties would encompass the broad range of services necessary to meet the needs of insurance consumers in Texas.

### TDI Role Should Reflect a Changing Health Insurance Market

Much of the work of implementing the ACA will happen at the state level, with the Texas Legislature and TDI playing central roles in shaping access to insurance for Texas residents. As introduced, SB 644 does not address fundamental changes needed at TDI with respect to the changing health insurance marketplace. If the Texas Legislature does not equip TDI to fully protect consumers and enforce new insurance regulations, federal regulators may step in and enforce insurance protections in Texas. This would not be the best outcome for Texas consumers. If federal regulators enforce certain laws, it

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will be difficult for consumers to know which entity to register complaints with and what remedies are available. If federal and state regulators do not work together closely, which would be challenging to do, consumer complaints and issues could get shuffled between agencies and fall through the cracks.

The best approach for Texas health insurance consumers would be for the Legislature to adopt statutory changes that conform Texas laws with new insurance protections in the ACA. This would allow TDI to use its range of monitoring and enforcement tools to protect consumers and ensure that insurers are following the law. Without explicit authority to enforce consumer protections, enforcement tools available to TDI may be limited, open to challenge by insurers, and insufficient to prevent federal enforcement of insurance regulations within the state.

Given that TDI already has new roles and responsibilities related to the ACA and will have more over time, it is appropriate that the statutory needs related to these new roles be included as the Legislature considers the future of the agency through SB 644. The most important new roles to include are those related to ACA provisions which have already taken effect or will take effect this year.

### Consumer Protections Already In Effect

Many new ACA health insurance protections took effect in September 2010, including:

- No lifetime limits;
- Young adults can stay on their parent's coverage until age 26;
- No denials of coverage and coverage waiting periods for children with pre-existing conditions;
- No rescission, the retroactive cancellation of coverage generally triggered when an enrollee generates claims;
- Strengthened internal and external appeals processes; and
- No co-pays or other out-of-pocket costs for effective preventive care recommended by the U.S. Preventive Services Task Force.

Many Texas consumers are counting on these new protections to improve their access to insurance coverage and health care. These provisions should be adopted in state law so that TDI can clearly enforce these new protections for Texas consumers. Without conforming state laws that empower TDI, federal enforcement of these provisions within Texas is possible.

### New Rate Increase Review System Starts This Year

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 to collect, much less review, rates for employer-sponsored insurance. Not only is this practice out of line with how Texas oversees many other types of insurance (like homeowners and auto), it is out of line with how most states oversee health insurance. Most other states use oversight tools to make sure that health insurance rates in the small employer and/or individual markets are reasonable. TDI should be authorized to approve or deny health insurance rate increases before they are charged to consumers.

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Under the ACA, the state and federal governments will begin a new system of health insurance rate increase review later this year. Insurers will have to provide justification for rate increases above a certain amount. These justifications will be available publicly, so consumers can get useful information on what factors are driving their health insurance rate increases. Either the state or the federal government will review these justifications to determine if rates are reasonable. A history of unreasonable rate increases is one of the factors the health insurance exchanges (new insurance marketplaces available in 2014) must take into account when determining whether or not to let a health plan sell through the exchange.

TDI can conduct the rate reviews if Texas is found to have an effective rate review system; otherwise the federal government will conduct rate reviews for increases in Texas. Given that by rule, TDI only collects individual market rate filings when the increase exceeds 50 percent, and TDI does not collect rate filings for the small employers market at all, it is unlikely that Texas would be found to have an effective system of rate review today. To prevent federal review of Texas rates, TDI's rate review practices must be expanded. TDI applied for and was awarded a \$1 million federal grant last year to expand its health insurance rate review capacity. A second round of rate review grants will be available this summer. Even if statutory changes are not needed to create an effective rate review system, at a minimum, TDI will need to apply for and receive federal grant funding to make changes necessary to ensure state-based review of health insurance rates.