



COMMENTS ON THE TDI SUNSET STAFF REPORT

The Center for Public Policy Priorities (CPPPP) appreciates this opportunity to comment on the Texas Department of Insurance (TDI) and Office of Public Insurance Council (OPIC) Sunset Staff Report. With one in four Texans lacking health insurance coverage and the cost of coverage increasing ten times faster than income, the staff report correctly identifies the need for the state to examine its current approach to insurance regulation. 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 not only foster a competitive marketplace, but also to make affordable health insurance available to Texans.

Texas' commercial health insurance market is considered "healthy" because of the relatively large number of carriers writing coverage and the low level of regulation compared to other states. The effect of this market on Texas consumers, however, is anything but healthy. The private health insurance market in Texas generates the third highest premium increases in the nation, produces one of the lowest rates of coverage through employer-sponsored insurance in the nation, and leaves one in four uninsured. Many small employers in Texas want to provide coverage to their workers but cannot afford to with premium quotes as high as \$23,000 a year per employee.¹ Texans must think twice before switching jobs or starting businesses for fear that they will not be able to get health insurance. Others are denied for coverage because they have preexisting conditions.

The notion that a hands-off approach to regulation promotes the best outcomes has not worked any better in the Texas health insurance market than it has in the mortgage industry. Texas needs a truly healthy insurance market that is fair and accessible to consumers as well as insurance companies. In a truly healthy market insurers would make a reasonable profit and compete to gain business—as opposed to avoid risk—and consumers would be able to purchase affordable insurance products that meet their needs. As the agency that oversees this market, TDI must balance the needs of the insurance industry and consumers, but TDI is currently not positioned to respond well to consumers' needs. TDI's current regulation of financial solvency, deceptive marketing, and policy forms is critical, but it does not address consumer's primary barrier to accessing quality health insurance—cost. OPIC is also needed in a truly healthy insurance market. The insurance industry represents its interests to TDI using teams of professionals and experts. Consumers deserve equally expert and independent representation through OPIC.

The Sunset staff determined and we agree that the fundamental questions of TDI's role in making insurance available were outside the scope of the staff review; however, these issues are well within the scope of the Sunset Advisory Commission and the Legislature. One of the most important outcomes to the TDI Sunset process will be redirecting and equipping TDI and OPIC to play lead roles in making quality, affordable health insurance available to more Texans. To that end, CPPPP supports the following recommendations:

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- **Strengthen TDI’s mission and duties.** Both TDI’s mission and statutory duties should be updated to charge TDI with protecting consumers and helping consumers access quality affordable insurance.
 - **Create a division within TDI dedicated to expanding health insurance coverage.** This division should provide education and assistance to individual employers and Texans seeking to get or keep insurance. This division should also develop strategies and policies to expand coverage by working with stakeholders, researching programs working in other states, analyzing the Texas market, and identifying barriers to coverage. TDI should include in its biennial report to the Legislature options for expanding health insurance coverage developed by this division.
 - **Authorize TDI to ensure that rates charged to consumers are fair.** Texas engages in almost no regulation of health insurance costs, which prevents the agency and the public from knowing if health insurance rates and rate increases are justified. 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 regulates many other types of insurance, it is out of line with how most states regulate health insurance. Most other states use tools to make sure that health insurance rates in the small employer and/or individual markets are fair. Texas should too. Common tools used by other states are rate review and minimum medical loss ratios.

Texas could require that health insurers file information to justify rate increases in a manner prescribed by TDI to allow efficient review by the agency and use in consumer rate guides. TDI would be authorized to reject rates that are excessive, inadequate, or discriminatory. Texas could also set minimum medical loss ratios to ensure the prudent use of premiums. Medical loss ratios are the percentage of premium dollars used to pay for medical care. Consumers deserve to know that a large percentage of their health insurance premiums will go to paying for medical services as opposed to profits, administration, and marketing.

- **Prevent small employers from getting priced out of the market based on the age or health status of employees.** Texas uses “rate bands” to limit premium variability in the small employer market, but several rating factors are not limited by a band. That means there is no true limit on how far premiums can vary from the lowest to highest priced groups. Employers with older or less healthy employees may find that they are assigned maximum rates many times higher than the average rate and priced out of the market. Other states limit variability more effectively with community rating or tighter rate bands. Texas should limit the overall premium variability in the small employer market to no more than 2:1.
- **Direct TDI to implement health insurance programs and public-private partnerships based on best practices in expanding coverage.** Promising programs in other states that Texas could model changes on are Healthy New York and the Massachusetts Health Insurance Connector. Healthy New York uses public reinsurance to make private health insurance available to qualified employers and individuals at half of the cost of other coverage. Massachusetts’ Connector helps people obtain subsidized private health insurance coverage.
- **Strengthen OPIC’s consumer protection role.** As TDI takes an active role in health insurance regulation, OPIC should ensure that consumers are represented in matters relating to health insurance accessibility and affordability.
- **Increase access through the Texas Health Insurance Risk Pool.** The pool is the insurer of last resort for individuals who are uninsurable due to preexisting conditions and have no access to employer-sponsored insurance. Pool enrollment is relatively low because coverage is too expensive for middle-income families and its lengthy preexisting condition exclusion is inappropriate for the pool population. These and other barriers to pool access should be removed so that more uninsured Texans can access this vital coverage.

The recommendations above will give TDI and OPIC the tools they need to create the health insurance marketplace that Texas consumers deserve. CPPP also has the following comments on certain Sunset staff recommendations:

- **TDI Issue 9.** CPPP agrees with TDI recommendation 9.1 to continue TDI for 12 years, but believes that recommendation 9.2 stops short of the changes needed to update TDI's statutory duties. As described above, TDI's mission and statutory duties should reflect TDI's role in helping consumers access quality, affordable insurance. A division should be created within TDI to fulfill this mission by helping expand health insurance coverage.
- **OPIC Issue 1.** CPPP disagrees with OPIC recommendations 1.1-1.4 to abolish OPIC and transfer its functions to TDI. Though limited, OPIC currently has an important role. OPIC's independent representation of consumers is vital for balanced insurance regulation. 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 role.

Sunset staff notes in the report that the recommendation to abolish OPIC and its function as an independent advocate for insurance consumers may not apply if the legislature changes the way TDI regulates insurance. As described above, CPPP supports regulatory changes at TDI in which OPIC would have an active role representing consumer interests in insurance markets, including the health insurance market.

Thank you for the opportunity to provide input.

¹ Texas Department of Insurance, Texas Group Accident and Health Insurance Survey, 2005.

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The Center for Public Policy Priorities is a nonpartisan, nonprofit research organization committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.