



TDI's Recommendations for the 80th Legislative Session



THE 80TH TEXAS LEGISLATURE is now in session and as required by the *Texas Insurance Code*, staff at the Texas Department of Insurance have prepared a report for lawmakers summarizing needed changes in the laws relating to regulation of the insurance industry.

to regulation of the insurance industry.

For the first time TDI's biennial report contains legislative recommendations for the workers' compensation system, which became part of the agency's duties after legislation last session abolished the Texas Workers' Compensation Commission.

Along with suggested legislation regarding Workers' Compensation, this article highlights a few of TDI's recommendations on emerging issues in the Life and Health market and the Property and Casualty market, including a look at coastal conditions and the state's vulnerability to catastrophic losses from disasters such as hurricanes. The entire report is available online on the TDI website at: <http://www.tdi.state.tx.us/reports/documents/finalbie07.pdf>

LIFE AND HEALTH MARKET

The life and health insurance markets in Texas are active and thriving. Important changes enacted by the Texas Legislature over the past few sessions have been implemented and the markets are seeing the results from those changes. However, significant challenges remain. In spite of the almost \$22 billion in premium written in the health insurance market, nearly 5.6 million Texans (25 percent of the population) do not have health insurance. The Texas Legislature has enacted, and the Department has implemented several market-based initiatives that are increasing the affordability and availability of health insurance in Texas.

EMERGING HEALTH ISSUES

Balance Billing – Health Maintenance Organizations

Balance billing (i.e., billing the consumer for any balance unpaid by the carrier) remains a concern for all participants in the health care system – insureds, providers and carriers. Complicating the issues are the different methods carriers use to reimburse out-of-network services, which may vary according to the type of carrier issuing the plan, the type of service rendered and the circumstances of the service.

In Health Maintenance Organizations (HMOs), balance billing should not occur. An HMO provides or arranges to provide covered services for enrollees on a prepaid basis through a network of physicians and providers. The enrollee pays only a scheduled charge for these services, usually a copayment. As long as the enrollee stays within the HMO network, no payment issues should arise.

If an enrollee obtains services outside the network, the HMO is generally not obligated to pay for the services. Two exceptions exist; where the HMO must refer an enrollee out-of-network because its network does not include the appropriate provider, and for emergency services.

HMO Reimbursement for Out-of-Network Referrals.

Despite the legal protections, the current situation sometimes results in HMO enrollees paying more than anticipated or required because they are billed beyond their deductibles and copays for out-of-network referrals. An enrollee who receives a balance bill should simply forward the bill to the HMO; however, most enrollees do not know to do so. Further, because of the statutory directive to HMOs to “fully” reimburse the providers

Continued on page 2

InSideInSight



Houston Mortgage Fraud Ring Busted	12
Title Rate Reduction	12
InDiscipline	13

TDI's Recommendations for the 80th Legislative Session

continued from page 1

needed to fill network gaps at an agreed upon or usual and customary rate, the providers, usually hospital-based, can require payment of full-billed charges, an amount that often exceeds typical contract rates.

The requirement to “fully” reimburse providers also may discourage hospital providers from contracting with the HMO. Since the providers often have an exclusive contracting arrangement with the hospital, any steerage benefit they might gain by contracting with the HMO is irrelevant. Hospital-based providers treat the HMO enrollees that enter the in-network hospital by virtue of their position within the hospital and do not need to contract with the HMO. In fact, contracting with the HMO would only serve to limit their potential reimbursement.

HMO Reimbursement for Emergency Services. Similar problems exist in the event of an enrollee's need for emergency services that exist in the out-of-network referral situation. Again, the key difference for emergency services reimbursement is that the statute does not require the HMO to “fully” reimburse the provider. The absence of the word “fully” creates additional ambiguity beyond what exists in the statute governing HMO reimbursement for out-of-network referrals.

Recommended Options

Potential legislative solutions to these problems fall into two basic categories: (1) improving HMO network adequacy and (2) revising the compensation methodology of non-network providers in hospitals.

Improving Network Adequacy. A hospital in an HMO network receives an economic benefit from that status, and some argue that it should have to maintain the HMO network's adequacy. To encourage network adequacy in this area, the state could require hospitals to develop strategies to increase utilization of network providers and protect enrollees in several ways.

The law could require a network hospital to develop a system to assign available HMO contracted providers to care for the HMO's admitted patients. This solution only works if contracted providers are practicing at the hospital, which may not always be the case. The measure's effectiveness would also be limited by the number of these providers available to treat admitted HMO enrollees.

Another alternative would be to require hospitals to grant practice privileges to HMO network providers provisionally for the sole purpose of treating HMO patients. This measure would allow the HMO to solidify its network within the network hospital. The success of this measure depends, of course, on the HMO having providers of certain types under contract in the service area. Hospitals may argue that they should have the opportunity to set minimum quality standards for personnel, but the HMO has to credential its network members and the hospital may be able to rely on the HMO's credentialing. This measure could also be optional to allow the hospital to preserve its oversight of doctor quality if it takes other steps to ensure the presence of adequate contracted providers.

Continued on page 3

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By necessity, summaries of proposed and adopted rules cannot explain their full complexity. Readers interested in complete information about administrative rules should consult the versions published in the Texas Register.

To the best of the staff's ability, information presented in this newsletter is correct as of the publication date, but scheduled dates and proposed rules and amendments may change as the adoption process goes forward.

TDI's Recommendations for the 80th Legislative Session

continued from page 2

Revising the Method of Figuring Compensation of Non-Network Providers. Another possible change involving hospitals would be to require a network hospital to condition practice privileges on a provider agreement to hold HMO enrollees harmless, just as the hospital has to agree to do when it contracts to join an HMO network. This solution has the broadest range of the three hospital-based solutions.

The state could also set a standard for compensation at the usual and customary rate. The Texas Insurance Code does not define the term “usual and customary,” therefore the Legislature could either set this rate by statute, leave it to the parties to determine, or create an alternative dispute resolution system, such as arbitration, to resolve disputes regarding the usual and customary rate. One way to set the rate would be to tie the usual and customary rate to an existing rate standard, such as a percentage of Medicare reimbursement, or to the carrier’s highest contracted rate in the service area. While determining this standard would be contentious, once set it would greatly simplify claims processing.

Emergency Care. Adding the term “fully” to the statute would provide a clear and consistent standard for HMO reimbursement. The amendment would place providers in the same strong negotiating position regarding reimbursement that they currently enjoy with an out-of-network referral. Accordingly, the Legislature might wish to consider concurrently establishing a base rate for these services.

Balance Billing – Preferred Provider Benefit Plans

Out-of-network reimbursement by Preferred Provider Benefit Plans (PPBPs) is more complicated than HMO reimbursement since PPBPs do not provide prepaid care. Further complicating reimbursement matters is the lack of transparency in the cost of health care. As a result, consumers cannot know the true cost of health care and at times receive unexpected medical bills. Two factors enter into figuring the reimbursement: the percentage level of reimbursement and amount of reimbursement.

Percentage Level of Reimbursement. Insurers reimburse PPBP benefits at two levels: preferred provider (network) and basic (non-network). An insurer may pay a different (greater)

level of benefits to an insured based on the insured’s selection of a network provider. Generally this is done on a coinsurance percentage basis; a plan might, for example, reimburse at 90 percent for in-network care and at 60 percent for out-of-network care.

Amount of Reimbursement. The second and more varied factor is the reimbursement amount – the figure to which the percentage is applied. Texas law contains no specific standard, such as “usual and customary,” to regulate the amount of this figure. The only legal restriction is that an insurer offering a PPBP shall ensure that both preferred provider benefits and basic level benefits are reasonably available to all insureds within the service area.

This situation is illustrated by the following example describing reimbursement under a PPBP. For care within the network, assume an insured sees a primary care doctor who advises the insured to see a specialist. To see an in-network specialist, the enrollee would pay only \$30, however to see an out-of-network specialist, the enrollee’s cost could range from \$75 to \$185.

The statutory language governing emergency care in a PPBP, as is the case with HMOs, is slightly different than that governing out-of-network care. Insurance Code Section 1301.155 provides that if an insured cannot reasonably reach a preferred provider, the insurer shall provide reimbursement for specified emergency care services at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider. Generally the Department interprets this language to mean the same percentage level of reimbursement.

Since no specific statutory guidance exists, PPBPs reimburse under several different standards. “Usual and customary,” “reasonable and customary,” and “allowable amount” are three of the common terms insurers use to denote the amount they will use to calculate reimbursement for a particular service. Thus, 50 percent reimbursement for a particular out-of-network service may result in different payment amounts from one insurer to another. Although some balance billing is inherent to PPBPs, the disparity between reimbursement and billed charge may lead to unexpected and excessive financial responsibility for the insured who receives care out-of-network.



Continued on page 4



TDI's Recommendations for the 80th Legislative Session

continued from page 3

This disparity becomes even more acute when the insured is forced to seek care outside the network because the insurer does not have the appropriate provider in its network. The law offers some protection by requiring the insurer to reimburse at the same percentage level of reimbursement as a preferred provider. The law does not address, however, the disparity between billed charges and the insurer's reimbursement level. This disparity results in unanticipated expenses for the insured, as the insured may be subject to a larger coinsurance bill than if the insured had been able to receive services from a network provider.

Moreover, just as HMOs argue that the "fully reimburse" language discourages providers from contracting with them, providers may argue that the ability of a PPBP issuer to set its own reimbursement amount discourages the issuer from contracting with providers, as it arguably has considerable freedom to set rates.

Reimbursement for emergency services is the same as with necessary out-of-network care; the insurer may have to pay the same percentage level, but if the amount to which the percentage applies is lower than the billed charge, the insured will be balance billed.

Recommended Options

Similar to the solution to HMO reimbursement issues, a standard reimbursement level could be set. The standard could be simple, such as directing payment at the usual and customary amount, or more complex, such as tying reimbursement to an existing reimbursement schedule, such as Medicare's, or developing some other system for resolving disputes over reimbursement.

To protect insureds, the Legislature could require PPBPs to reimburse at a percentage of billed charges for emergency services, or some other established rate such as "usual and customary." Since the care may occur out of the service area, the contracted rate may not be as appropriate an alternative as it is in the service area, but it would be an improvement over the current situation.

EMERGING LIFE ISSUES

Suitability and Replacement of Annuities and Other Life Products

Complaints received by the Department indicate that many senior citizens are sold life insurance, annuities and variable annuities unsuitable for their financial and investment needs. Many states have already adopted rules or enacted legislation that address replacement of life and annuity policies and/or require insurers and agents to inquire into the suitability of annuity products for consumers, especially senior citizens. The legislation defines acceptable practices and provides a mechanism by which regulators can hold insurers and agents accountable for recommending and/or selling unsuitable products to senior citizens and others.

Agents and carriers often sell life and annuity products to consumers without fully explaining the fees, penalties, risks and tax consequences associated with these products. Consumers, especially senior citizens, are sometimes unwilling to complain and will not testify against an agent or financial advisor.

High commission levels can be a major factor in which products an agent recommends to customers, which may eclipse the short- and long-term needs of the individual in the course of a transaction. Further, when such sales replace existing insurance, annuities, or other investments, the purchase may involve high surrender charges, higher costs and adverse tax implications. Ultimately, the consumer is placed at a financial disadvantage, and in some cases, unable to recover lost wealth, leading to financial insecurity.

Recommended Options

Enact the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions and the Life Insurance and Annuities Replacement Model Regulation or authorize the Commissioner to adopt the NAIC Model Regulation. Texas is one of only five states that has no replacement law.

Consider additional statutory protections for senior citizens with regard to policy provisions based on age of issue, maximum surrender periods, longer "free look" periods, and mandatory reinstatement of a replaced policy under certain circumstances.

Continued on page 5

TDI's Recommendations for the 80th Legislative Session

continued from page 4

Consider prohibiting agent acts such as soliciting or accepting “gifts” of real estate or things of value over \$5,000; soliciting or accepting investment funds in an agent’s business enterprises; and being appointed a guardian and/or trustee of a client’s person and/or estate or being named beneficiary on any life insurance, annuity or will when there is no legal or familial relationship to the client.

PROPERTY AND CASUALTY MARKET

Overall, the Texas Property and Casualty (P&C) insurance market is as healthy as it has been in recent years; however, recent hurricane experience is affecting the homeowners market along the coast. Insurers have seen improved results in the major lines of insurance largely due to stabilizing loss trends and reforms enacted by the Texas Legislature that helped mitigate losses and create competition.

EMERGING P&C ISSUES

Texas Windstorm Insurance Association

About 30 percent of Texas’ population lives in counties along the Texas Coast and the counties adjacent to them. The insurance industry estimates that in 2004, about \$750 billion in insured properties in the state were vulnerable to hurricane losses.

In 2005, hurricanes cost the insurance industry about \$46 billion in losses countrywide, the worst season for losses on record. The only one to hit Texas, Hurricane Rita, caused an estimated \$2.6 billion in insurance losses in the state. The 2005 Atlantic hurricane season was a record year in terms of named storms, 28 in all. Some hurricane experts are predicting that the current cycle of very active Atlantic hurricanes will continue for several years.

Recommended Options

Funding. The current funding mechanism for TWIA was developed in 1993 at a time when TWIA’s exposure to loss was considerably less. In that year, the combined residential and commercial exposure was \$6.5 billion, about one-fifth of today’s levels. What may have been adequate then to promote the property market and protect state revenues may be completely inadequate today.

Future changes to TWIA’s funding structure should contemplate the combination of reinsurance, financial instruments, and bonding, as well as restructuring the public-private system of coastal insurance. The changes should focus on a system that does not excessively expose the state’s general revenue to hurricane losses while at the same time allowing for strong, sustainable economic growth along the coast by making necessary insurance coverage available.

The Legislature may want to consider expanding the funding sources available to TWIA to include pre-event and/or post-event bonding authority to be funded by some combination of policyholder surcharges rather than General Revenue premium tax credits; and provides for enhanced temporary liquidity in the event of a catastrophe through a stand-by bank line of credit.

Designated Catastrophe Areas

In the spring of 2006, the Department began receiving numerous inquiries and feedback from various members of the public, including representatives of the Texas Apartment Association, the Independent Insurance Agents of Texas and the Texas Association of School Boards, regarding the unavailability and unaffordability of wind and hail coverage in counties along the coast (first-tier counties) and those bordering them (second-tier counties, particularly Harris County). The majority of affected properties were condominiums, town homes, apartments and schools located in the second-tier counties. The market restrictions and price increases generated requests to expand the areas in which TWIA can provide wind and hail coverage so that property owners may obtain coverage through TWIA.

The standard for “catastrophe area” as currently defined in the code requires that insurance not be reasonably available to a substantial number of owners of insurable property. Even though it is clear that some types of structures are having difficulty obtaining wind and hail insurance, it may not be sufficient to meet the “substantial number” standard. In addition, once an area is designated as a “catastrophe area,” all insurable property located in the area is eligible for coverage through TWIA. As a result, the State’s general revenue may be put at much greater risk in order to assist a seg-



Continued on page 6



TDI's Recommendations for the 80th Legislative Session

continued from page 5

ment of the market in obtaining wind and hail insurance. For example, Harris County alone currently has more than \$180 billion in insurable property.

The Legislature may want to consider amending the provisions that allow the Commissioner to designate additional catastrophe areas to provide flexibility for the Commissioner to expand TWIA eligibility by classification or type of risk, e.g., if certain types of entities such as public buildings or habitational risks are having difficulty obtaining coverage through the voluntary market, the Commissioner could expand eligibility on a limited basis to include only those types of risks.

Rates

The procedures used in calculating TWIA rates are set out in great detail in the statute. For example, rates must be uniform throughout the first-tier counties, certain combinations of TWIA and non-TWIA data must be used to determine the catastrophe and noncatastrophe elements of the rates and certain numbers of years of experience must be used. This differs from other insurance pools in the state where there is much greater flexibility in the actuarial procedures that can be utilized and where there is greater freedom to adapt the rate structure for changing conditions.

The Legislature should consider amending the rate-setting requirements in Article 21.49 to allow greater rating flexibility. Options to consider include:

- allowing a file-and-use implementation of rate changes not exceeding 5 percent in any 12-month period and applying the current regulatory standards (approve, disapprove, modify) to greater rate changes;
- eliminating portions of the existing law that specify the precise experience that must be used to develop rates, permitting actuaries to use whatever data would be most appropriate in the specific circumstances;
- permitting the limited consideration of the results of hurricane models, perhaps in conjunction with actual historic experience in the development of TWIA's rates (e.g., allow 5 percent rate increase based on the average of the hurricane models every 24 months);
- permitting geographic variations in TWIA rates where such variations can be actuarially-supported;

- allowing a premium charge that would go directly (100 percent) to the CRTF (the charge would not be subject to agent commissions, administrative charges, etc.); and
- providing for the tempering of rate changes arising from changes in ratemaking procedures so as to avoid rate shock by maintaining the current statutory 10 percent cap.

Windstorm Mitigation

The Windstorm Inspection Program was started in 1988 and is administered by the Department. The program is responsible for determining building code compliance for the purpose of obtaining and maintaining windstorm and hail insurance coverage through TWIA. Until recently, a homeowner would have to obtain a Certificate of Compliance (WPI-8) in order to obtain or maintain windstorm and hail insurance through TWIA. Now, in lieu of a WPI-8, and for a specified period of time, a homeowner can obtain the coverage by paying a premium surcharge.

Currently, all Texas municipalities are required to adopt the International Residential Code (IRC) and International Building Code (IBC) for the purposes of obtaining insurance from TWIA; however, the Department has adopted stronger wind-resistant construction criteria beyond what is required under the IRC and IBC.

Loss mitigation is an important element of preparing for future windstorms. Even though municipalities are required to adopt the IRC and IBC, there are currently no provisions in place to ensure that municipalities have adopted or are inspecting or enforcing these codes.

Adopting and enforcing stronger building codes may encourage insurers to write more wind and hail coverage in the coastal counties, thus lessening the exposure for TWIA. It would also ensure that if some of these properties are eventually insured by TWIA, they will be in compliance with the windstorm building code standards and would not require expensive inspections after the structures have been completed nor would there be a need to pay premium surcharges.

The Legislature may want to consider the following options:

- requiring local jurisdictions, including counties, to adopt and enforce windstorm building

Continued on page 7

TDI's Recommendations for the 80th Legislative Session

continued from page 6

- code standards in coastal counties that have a significant hurricane exposure;
- requiring municipalities to develop windstorm inspection programs, including structural plan review by design professionals, windstorm inspections and certification as part of their current inspection programs; and
- providing for the long-term phase-in of any changes to allow for public education and compliance.

Reinsurance Facility

The frequency and severity of recent hurricane losses and predictions of a continuing pattern has had a dramatic impact on reinsurance capacity and pricing which in turn has impacted the affordability and availability of primary insurance along the Texas coast. Many insurers, including TWIA have indicated they are unable to purchase the amount of reinsurance desired and that the available reinsurance costs substantially more than last year. Reinsurance prices have increased between 100 percent and 200 percent over last year. These increased costs of reinsurance are passed on to policyholders.

The 2006 cost for TWIA to purchase the same amount of reinsurance that was purchased in 2005 was almost double, or approximately \$38 million dollars higher. TWIA ultimately purchased a lower level of reinsurance in 2006 at a cost that was approximately \$7 million higher than the 2005 reinsurance program. Additionally, there was not sufficient reinsurer participation on the 2006 reinsurance program to obtain the full amount of reinsurance TWIA was seeking.

Reinsurance availability and price are influenced by:

- changes in hurricane models that have increased probable loss figures;
- rating agencies becoming more conservative in evaluation of insurers' catastrophe plans;
- forecasts of increased hurricane activity and strength;
- reinsurer needs to rebuild capital; and
- a dysfunctional market due to the absence of normal competitive pressure.

The Legislature may want to consider the following option:

- establishing a windstorm reinsurance facility (Facility) similar to the Florida Hurricane

Catastrophe Fund to provide a stable and ongoing source of reinsurance to insurers, TWIA, and the Texas FAIR Plan Association (TFPA) for a portion of the hurricane losses incurred by those entities.

The purpose of a Facility would be to protect and advance the state's interest in maintaining insurance capacity in Texas and to improve the availability and affordability of residential property insurance in Texas by providing reimbursements to insurers, TWIA and TFPA for a portion of their catastrophic losses at a reasonable cost. Providing a stable and ongoing source of reinsurance for TWIA and the TFPA will enable these associations to obtain a greater level of protection against catastrophic losses which, in turn, may help minimize policyholder surcharges or premium tax credits.

Options to consider in creating the Facility to help achieve the intended purpose:

- requiring all licensed insurers in Texas, including TWIA and TFPA, that write certain policies to purchase reinsurance from the Facility;
- providing the Facility pre-event and post-event bonding authority; and
- providing the Facility assessment authority to service the bonds or to pay for losses.

Voluntary Market

The most immediate after-effect of Hurricane Rita has been the impact on affordability and availability of property insurance in the coastal counties. Several major insurers have filed for rate increases. In addition, several insurers have informed TDI that they will be restricting wind coverage along the coast by excluding it from their policies and in some limited instances, not writing coastal business altogether.

Some assert that the inadequate funding structure and rates of TWIA have increased the likelihood of insurer assessments and stifled the development of a competitive homeowners market as insurers weigh expanding their market share against the potential for future assessments.

It is expected that addressing the issues discussed in this section would encourage the development of the voluntary market; however, the Legislature should also consider pro-

Continued on page 8





TDI's Recommendations for the 80th Legislative Session

continued from page 7

moting voluntary entry into the property market by:

- providing for the phase-in of potential TWIA assessments over several years for new property insurance writers; and
- creating a rate filing “safe harbor” that provides that a coastal rate change not exceeding five percent in a 12-month period following a storm is presumed reasonable. After the third consecutive increase, any future rate change would be governed by current law, i.e., subject to disapproval by the Department. This should be conditioned on an insurer continuing to directly insure for wind loss.

It should be noted that these changes may only result in incremental increases in capacity, or work merely to slow the withdrawal from the coast after a major storm or storms.

Funding of the Texas FAIR Plan Association

In response to an insurance availability problem sparked in part by mold claims and water damage claims, the Texas FAIR Plan Association (TFPA) was established in 2002 to provide residential property insurance statewide. The TFPA consists of all property insurers authorized to write business in Texas, and those members participate in any assessments due to shortfalls in revenue. In addition to relying on member insurer assessments and reinsurance to fund excess losses, the TFPA is also statutorily authorized to issue public securities as a method to raise funds for losses. The amount of public securities that may currently be issued to fund TFPA losses cannot exceed \$75 million. TFPA member insurers are expressly authorized to make a premium surcharge on each policy they issue to recoup assessments, including service fees to pay the debt service on public securities. In November 2004, the TFPA policy count peaked at more than 134,000 policies representing \$24 billion in liability. As of September 30, 2006, the policy count was approximately 79,000 with \$12.9 billion in liability.

While the TFPA policy count and liability has declined significantly in the last two years, the problem now is its concentration of risks in areas that are vulnerable to hurricane losses, primarily in Harris and Fort Bend Counties. These and the other coastal counties account for more than half of TFPA's policies and liability. As a result of increased reinsurance costs and predic-

tions of increased hurricane activity, voluntary insurers have restricted underwriting along the Texas coast. There is a high possibility that more and more of these coastal risks will have to obtain insurance through TFPA. There are strong similarities between TWIA and TFPA in terms of their vulnerability to a catastrophic loss from a hurricane and how shortfalls in their funding impact the policyholders of the state. Therefore, to the extent that policy decisions are being debated as to how TWIA's funding should be changed and how funding shortfalls are to be funded and who should pay for it, a similar discussion needs to take place for TFPA.

Recommended Option

Provide for adequate and consistent funding mechanisms to both TWIA and the TFPA to allow for growth, especially with regard to growth in areas subject to catastrophic loss.

Title Insurance Rates – Pilot Study

Texas is one of only three states in which the Commissioner of Insurance promulgates title insurance rates, policy forms and endorsements, and associated rules. All title underwriters and agents must use these rates and forms. This system contrasts with other lines, where greater rate freedom is permitted. For instance, at present, rates for virtually all property and casualty coverages in Texas, other than title, are subject to a file-and-use regulatory system.

Under a promulgated rate system, insurers must report their expenditures for purposes of setting rates. It is in the market's best interest that expenditures are reported fairly, so that the actual price reflects actual costs. There is no disincentive, however, for insurers to have and report as high a cost as possible, because under a promulgated rate system they will not be harmed by price competition if their expenditures are too high.

Under the current system, rates are set at biennial rate and rule hearings. These are long and costly processes that produce results that may not be indicative of the current market once the final rate and rule is adopted. Given that the use of the resulting rates is mandatory, consumers do not have the ability to shop for coverage on the basis of cost as they do in other states or lines of insurance. There is no price competition in the title insurance marketplace.

Continued on page 9

TDI's Recommendations for the 80th Legislative Session

continued from page 8

This lack of competition results in inefficiencies in the marketplace. For instance, instead of competing directly for consumers' dollars, many, though not all, agents compete by expending their marketing efforts on real estate agents, lenders, builders and other "producers" who can direct the ultimate consumers, property buyers, to a particular title agency. Moreover, the current system allows builders, producers, lenders and others to own agencies dedicated to particular real estate developments. While such integration may be efficient on its face, additional costs may find their way into the rate structure with no effective level of competition to keep those costs in check.

Some small, rural and/or independent agents contend that large, metropolitan, and/or underwriter-owned agents put them at a competitive disadvantage by their arrangements with large property developers which control the title transaction and pay the smaller agents only a fraction of the overall premiums. If a rural agent, who may be the only agent in a particular county, is put out of business, the local population loses the local title expertise needed to evaluate and minimize local title issues.

It should be noted that the shift in regulatory platform discussed in this recommendation is a major change in public policy. There are numerous considerations, such as predatory pricing and the impact on title agencies in rural and midsized counties, for which the ultimate consequences are unknown. Any change, therefore, should be incremental and conducted under the close scrutiny of the Legislature.

Recommended Options

Allow the Commissioner of Insurance the explicit flexibility to develop alternative rating structures that introduce some measure of price competition into the market. Any alternative rating structures should have a delayed effective date to allow for any legislative changes.

Alternative rating structures could take on several forms, such as initially permitting the filing of independent rates on a prior-approval basis, followed by a file-and-use system over a longer period of time.

There are several considerations to implementing an alternative rating structure on an incremental basis. For example, should a rating struc-

ture permit rating distinctions based on geographic region or the size of the underwriter or agency? Rating distinctions could include variations in the monetary split between underwriters and agents to account for the cost-shifting cited by many rural agents. Measures should be taken to prevent predatory pricing that may adversely impact title agencies and therefore the quality of title transactions in certain counties. Further, consideration should be given to whether title insurance premium rates should be all-inclusive, the scope of any changes and the amount of time over which any changes are implemented.

These changes may result in some downward pressure on rates. Further, it could curb marketing and other expense practices that presently place some upward pressure in costs that would otherwise be kept at a minimum in a more competitive environment.

The initial development of a competitive market structure should be commenced no sooner than 2009. Further, any reforms, however incremental, should be implemented gradually while data on outcomes is gathered and analyzed. The time and quality of information gathered will allow the market to evolve at a much more gradual pace, giving the Legislature, industry and consumers time to adjust and make recommendations to ensure an orderly transition.

Workers' Compensation System

The past two years have seen significant changes in the Texas workers' compensation system. Policymaker and system participant concerns about high medical costs, problems with access to medical care and poor return-to-work outcomes, coupled with increased frustration with the administration of the system by the former Texas Workers' Compensation Commission (TWCC) spurred interest in a legislative overhaul of the system. Interest in making legislative changes also coincided with the scheduled Sunset review of TWCC in 2005 by the Sunset Advisory Commission, which resulted in a series of significant management and legislative recommendations.

These recommendations covered issues such as: changes in system administration, including the creation of an agency geared towards assisting injured workers; the promotion of managed care networks that would resemble group

Continued on page 10





TDI's Recommendations for the 80th Legislative Session

continued from page 9

health regulation; enhancement of certain types of income benefits; streamlining medical and income benefit dispute resolution; and the promotion of key legislative goals, including the importance of ensuring the safe and timely return of injured workers to productive employment.

In response to these Sunset recommendations and with significant input from system participants, the 79th Legislature adopted House Bill (HB) 7 in 2005, which represents the most significant set of reforms to the Texas workers' compensation system since 1989.

Key aspects of these reforms included:

- the abolishment of the former TWCC and the transfer of its administrative duties to the Division of Workers' Compensation (Division) at TDI headed by a governor-appointed Commissioner of Workers' Compensation (Commissioner Albert Betts – appointed in September 2005);
- the creation of a newly formed Office of Injured Employee Counsel (OIEC) to serve as a voice for injured workers during rulemaking and assist them during dispute resolution headed by a governor-appointed Public Counsel (Public Counsel Norman Darwin—appointed in December 2005);
- the formation of workers' compensation health care delivery networks geared towards improving the quality of medical care received by injured workers at a reasonable cost to Texas employers;
- the creation of a performance-based oversight program administered by the Division to promote incentives for insurance carrier and health care provider compliance;
- the abolishment of the Division's Approved Doctors' List (ADL) starting on September 1, 2007 or earlier if determined by the Commissioner of Workers' Compensation;
- the streamlining of medical and income benefit dispute resolution processes to improve the timeliness of dispute resolution; and
- increased focus on improving return-to-work rates in Texas.

A little more than a year after the effective date of HB 7, most of the key provisions of this legislation are currently being implemented by TDI. While it is too early to effectively gauge the full impact of this legislation, it is impor-

tant to continuously assess the operational effectiveness of the Texas workers' compensation system to establish a baseline by which policymakers and system participants may measure the relative impact of the HB 7 reforms in the future.

Recommended Options

Workers' Compensation Fraud Penalties.

Chapter 701 of the Texas Insurance Code establishes the Insurance Fraud Unit within the TDI. The Fraud Unit investigates and refers for prosecution persons engaged in, or suspected of being engaged in, fraudulent insurance activities. In response to the passage of HB 7 (79th Legislature, Regular Session, 2005) and to utilize the Fraud Unit's law enforcement authority and experience, the Commissioner of Workers' Compensation, Commissioner Albert Betts, delegated to the Fraud Unit the task of investigating and referring suspected workers' compensation fraud for prosecution. The types of workers' compensation cases the Fraud Unit investigates include claim fraud, health care provider fraud, premium fraud and also agent, adjuster and company fraud. Chapter 418, Labor Code, addresses criminal penalties to be assigned to workers' compensation fraud.

The maximum penalty for committing workers' compensation fraud under Chapter 418, Labor Code, is a state jail felony. This does not parallel the penalty provisions in the Penal Code which follow the standard value ladder for committing insurance fraud or other similar financial crimes and in which punishment is dependent upon the value of the claim. Prosecutors should have the flexibility to use the penalty provisions in the Penal Code so that workers' compensation fraud can be punished in the same manner as fraud committed against other lines of insurance. Because the Labor Code statute is specific to workers' compensation fraud, it could be argued that a defendant can only be charged under a Labor Code statute, thus potentially impeding a prosecutor's election of the appropriate penalty provision. Adding an "Election of Prosecution" provision to the Labor Code would eliminate this arguable double standard and will improve prosecutors' and TDI's ability to obtain a proper judgment against persons

Continued on page 11

TDI's Recommendations for the 80th Legislative Session

continued from page 10

who commit criminal insurance fraud in the workers' compensation system. The Insurance Code affords this type of language in §85.052, which offers the election of prosecution for all criminal acts enumerated in the code.

TDI recommends amending the Labor Code to provide an "Election of Prosecution" provision similar to that found in TIC §85.052, to clarify that a person who commits an offense under the Labor Code may be prosecuted under the Labor Code or any other law of this state under which the person may be prosecuted.

Third Party Administrators. Under Chapter 4151 of the TIC a certified administrator (Third Party Administrator or TPA) collects premiums from or adjusts or settles claims for annuities, life, health, and accident policies for Texas residents. Workers' compensation insurance is a property and casualty product and individuals adjusting such claims are required to hold a Texas adjuster license; however, the wording of the adjuster licensing in the TIC §4101.001(a) limits the license to an individual. Entities that provide TPA services for workers' compensation are not required to be certified administrators. The result is that TPA entities that handle workers' compensation policies are not subject to any specific licensing requirements.

Although TPA entities that collect premiums from or adjust or settle claims for annuities, life, health, and accident policies are subject to the Department regulatory authority, TPA entities that handle workers' compensation policies and claims are not subject to Department regulatory authority. Under current law, the Department is limited to taking action against the workers' compensation insurance carrier for actions of the contracted TPA.

TDI recommends amending the definition of "administrator" in TIC §4151.001(1) to include workers' compensation benefits, and amend TIC §4101.001(b) to clarify that persons adjusting workers compensation claims on behalf of a TPA must maintain an adjuster's license. Such revisions would make the current statutes and regulations applicable to TPAs.

Submission of Claims by Health Care Providers. HB 7 (79th Legislature, Regular Session, 2005) amended §408.027, Labor Code, to align the timeframes regarding the payment of medical services provided in and outside of workers' compensation health care delivery networks, as well as to reflect some of "prompt pay" provisions in the Insurance Code. Subsection (a) of §408.027 requires a health care provider to submit a claim for payment to an insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee and subsection (b) requires insurance carriers to pay, reduce, deny, or determine to audit not later than the 45th day after the date of the receipt by the carrier.

When a provider treating a covered injured employee bills a group health carrier in error and later obtains accurate billing information and submits the bill to the appropriate workers' compensation carrier, the carrier denies payment when the bill is submitted later than 95 days from the date the service was provided.

TDI recommends amending §408.027, Labor Code to add language similar to the provisions of TIC §843.337, (a) (b) (e) and (f), which govern the timely submission of a claim to a Health Maintenance Organization (HMO).





Houston Mortgage Fraud Ring Busted

A HOUSTON GRAND JURY handed down indictments on eight individuals for a series of mortgage fraud scams in the Houston area, involving close to 300 properties valued at approximately \$40 million.

The indictments are the result of a long-term investigation by the Consumer Fraud Division of the Harris County District Attorney's Office and the Texas Department of Insurance Fraud Unit. TDI regulates title insurance and licenses title agents and escrow officers.

Most of the fraudulent transactions involved finding a "straw buyer" with a high credit score, and persuading that person to purchase one or more properties. The perpetrators would obtain a phony appraisal that was significantly inflated. Because of the buyer's favorable credit score, their loan would be approved with minimal scrutiny by the lending institutions. Once the sale went through, the scam artists would pocket the difference between the selling price and the inflated loan amount by charging consulting fees, remodeling fees, or other service charges that would be disbursed at the closing by the escrow officer. The unsuspecting buyer would then be stuck with a mortgage that was much higher than the true value of the property. In many cases the buyer was promised that the property would be leased and the mortgage payments would be made, only to find that the property was left unoccupied and the buyer's credit damaged by nonpayment.

Title Rate Reduction

TEXAS INSURANCE COMMISSIONER Mike Geeslin has reduced Texas title insurance rates by 3.2 percent. The new rates took effect February 1, 2007.

This latest rate cut follows a rate reduction of 6.5 percent in 2004. The Commissioner issues title rate rulings every two years. All told, the Department has cut title rates by approximately 17 percent over the last eight years.

In 1998, title insurance for a \$100,000 house was approximately \$1,023; today title insurance for that same \$100,000 house will cost an estimated \$843.



Tips to Avoid Mortgage Fraud

- Beware of unsolicited offers, especially if they involve the use of personal information such as your social security number or your good credit history.
- Never sign a blank document or a document you don't understand; seek advice from an outside attorney.
- Review any loan application carefully and verify that the value of the property is in line with similar properties, and is in line with the loan amount.
- Be wary of any property that has been sold a number of times in quick succession, which may indicate that its value has been fraudulently inflated.
- Call **TDI's Fraud Unit** toll-free at **1-888-327-8818** to report suspected fraud.

Another variant of the "straw buyer" scam involved identity theft and the use of stolen personal information to arrange the purchase of property. In these instances the victims were not even aware of their involvement until they got calls from creditors about missed payments.

Title insurance is purchased in real estate transactions to protect the buyer and lender in the event that the title is ever challenged. Unlike most Texas insurance rates, title rates are set by the Commissioner of Insurance and the same rate must be charged by all title companies. Rates are determined through actuarial analysis by the Texas Department of Insurance, taking into consideration expenses, profit targets and loss history.

NAME	CITY	VIOLATION	ACTION TAKEN	ORDER	DATE
Adkins, Travis Wayne	Houston	Failed to comply with continuing education requirements	\$1,500 fine; Must complete 30 hours of continuing education	061106	10/12/06
American National Title Company	Houston	Failed to timely provide annual trust fund account audit report and annual statistical report	\$8,000 fine	061179	11/10/06
Amigo, Juan Andres	El Paso	Failed to comply with continuing education requirements	\$1,350 fine	061174	11/10/06
ANSS-TX, LLC; dba Access National Title Company	Houston	Failed to timely remit title insurance policy guaranty fees	\$3,100 fine	061178	11/10/06
Barber, Sharon Kay	Mesquite	Misappropriated or converted money belonging to an insurer or insured; Engaged in fraudulent or dishonest acts or practices	\$1,294 in restitution; General Life, Accident and Health License and General Property and Casualty License revoked	061230	11/27/06
Belt, Terry L.; Residential Resources, L.P.; Otterbine, Phillip; Yancey, Jacqueline	Spicewood	Acted as a fee attorney and failed to use bona fide employees as escrow officers; P-53 rebating violation	\$11,500 in fines	061107	10/12/06
Benoit, Carolann	Rosenberg	Misappropriated or converted money belonging to an insurer or insured; Engaged in fraudulent or dishonest acts or practices	Title Insurance Escrow Officer License revoked	061175	11/10/06
Carrera, Lilia	Houston	Failed to comply with continuing education requirements	\$500 fine	061134	10/26/06
Central States Indemnity Company of Omaha	Omaha NE	Allegedly paid incorrect benefits to insureds by using a rate structure that was not currently approved by the Department	\$40,000 fine	061180	11/10/06
Chavis, Chann St. Michael	Sugarland	Engaged in fraudulent or dishonest acts or practices; Felony offense	General Life, Accident and Health License application denied	061092	10/06/06
Clark, Danielle Sherece	Plano	Engaged in fraudulent or dishonest acts or practices;	\$7,700 restitution; General Life, Accident and Health License revoked	061186	11/10/06
Crawford, Susan	Lufkin	Criminal offenses	Escrow Officers License issued and placed on probation for 2 years	061214	11/20/06
Diebolt, Douglas; Shappell & Diebolt, Inc.	Longview	Accepted commissions from unlicensed entities; Unauthorized insurance	\$7,500 fine; Cease and Desist Order	061127	10/13/06
Esmundo-Emberson, Rebecca Jill	Plano	Failed to comply with continuing education requirements	\$1,000 fine; Must complete 30 hours of continuing education	061124	10/23/06
Federal Insurance Company	Warren, NJ	Issued commercial multi-peril insurance policies with windstorm exclusion contrary to filed forms	\$10,000 fine	061183	11/10/06

NAME	CITY	VIOLATION	ACTION TAKEN	ORDER	DATE
First Federal Security, Inc.; Spooner, Anthony Roland	Glendale, AZ	Alleged advertising violation; Allegedly materially misrepresented terms and conditions of an insurance policy	\$3,000 fine	061133	10/26/06
Ford, Marjorie Elaine	Houston	Unauthorized insurance; Made a material misrepresentation on a license application	Cease and Desist Order, Escrow Officer License revoked	061123	10/23/06
Freedom Title, LP	Flower Mound	Failed to timely remit title insurance policy guaranty fees; Failed to timely complete monthly escrow trial balances	\$6,500 fine	061182	11/10/06
Galvan, Christopher D.	San Antonio	Failed to comply with continuing education requirements	\$2,250 fine; Must complete 30 hours of continuing education	061226	11/27/06
Gentiva Health Services	Irving	Taught continuing education courses without valid course certifications	\$1,000 fine	061177	11/10/06
Gleaton, John E.; dba Comanche County Abstract Company	Comanche	Failed to timely remit title insurance policy guaranty fees	\$3,800 fine	061213	11/20/06
Graham, Jennifer Leigh	Harker Heights	Materially misrepresented terms and conditions of an insurance policy; Engaged in unfair and deceptive acts or practices	\$171,607 restitution; General Life, Accident and Health License revoked	061228	11/27/06
Guilliams, Michael	Haslet	Engaged in fraudulent or dishonest acts or practices; Felony conviction	General Lines Life, Accident and Health Insurance Agent's License denied	061216	11/20/06
Hernandez, Margarito Borrego	San Antonio	Misappropriated or converted money belonging to an insurer or insured; Engaged in fraudulent or dishonest acts or practices	\$2,000 fine; General Life, Accident and Health License suspended for one year; Must complete 35 hours of continuing education	061121	10/20/06
Holcombe, Elizabeth, dba Trinity County Abstract	Groveton	Failed to timely file required annual statistical reports	\$5,100 fine	061125	10/23/06
Howard, Charles	Dallas	Acted as a fee attorney and failed to use bona fide employees as escrow officers; P-53 rebating violation	Title Insurance Escrow Officer License revoked	061126	10/23/06
Leal, Nabor Eldred	Waco	Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured	\$1,056 restitution; General Life Accident and Health License and County Mutual License revoked	061217	11/20/06
Palmer, Sylvania Roshell	Houston	Engaged in fraudulent or dishonest acts or practices; Felony conviction directly related to the business of insurance	Limited Lines License application denied	061187	11/10/06

NAME	CITY	VIOLATION	ACTION TAKEN	ORDER	DATE
Professional Land Title Company	Sulphur Springs	Failed to timely remit title insurance policy guaranty fees	\$2,250 fine	061184	11/10/06
Professional Land Title Company dba; Franklin County Abstract	Mount Vernon	Failed to timely remit title insurance policy guaranty fees	\$1,750 fine	061181	11/10/06
Provident Capital Indemnity, Ltd.	San Rafael, Heredia, Costa Rica	Unauthorized insurance	Emergency Cease & Desist Order	061154	11/06/06
Rangel, Nikki Ann	Houston	Failed to comply with Commissioner's Order	General Property and Casualty License revoked	061099	10/06/06
Vargas, Jaime	McAllen; Mission	Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured; Advertising violations	\$2,050 restitution	061076	10/02/06
WEBCE, LP LLLP	Richardson	Taught continuing education courses without valid course certifications	\$17,000 fine	061176	11/10/06
White, Aaron Joseph	Bertram	Failed to comply with continuing education requirements	\$1500 fine; Must complete 30 hours of continuing education; General Life, Accident and Health License suspended for one year	061229	11/27/06
White, Mark Edward	Pasadena	Engaged in fraudulent or dishonest acts or practices; Felony offense	General Property and Casualty Insurance Agent License denied	061122	10/23/06

InLicensing

New Companies	LOCATION	LINE	DATE LICENSED
Memorial Administrators, LLC - TPA	Austin, TX	Third Party Administrator	10/17/06
State Automobile Mutual Insurance Company	Columbus, OH	Property & Casualty	10/19/06
Employment Risk Systems, Inc. - TPA	Austin, TX	Third Party Administrator	10/30/06
PTRX, Inc. - TPA	Wilmington, DE	Third Party Administrator	10/30/06
Plans' Liability Insurance Company	Worthington, OH	Property & Casualty	11/03/06
MDOW Insurance Company	Houston, TX	Property & Casualty	11/08/06
Arkansas Community Care, Inc. - HMO	Little Rock, AR	HMO	11/21/06
Milwaukee Safeguard Insurance Company	Brookfield, WI	Property & Casualty	11/29/06
Butterworth & Macias, P.C. - TPA	El Paso, TX	Third Party Administrator	11/30/06
Disability Management Alternatives, LLC - TPA	Farmington, CT	Third Party Administrator	11/30/06

Name Changes

COMPANY NAME	LOCATION	CHANGED TO	DATE OF CHANGE
Christian Care Centers, Inc., DBA Greenway Village - CCRC	Mesquite, TX	Added additional DBA Bridgeview Estates	10/11/06
Midamerica Life Insurance Company	Omaha, NE	American Republic Corp Insurance Company	10/11/06
Commonwealth Claims Management Associates, Inc. - TPA	Boston, MA	Alan Gray Claims Processing Services, Inc.	10/17/06
David K. Young, DBA David K. Young, TPA - TPA	San Antonio, TX	David K. Young Consulting, LLC	10/17/06
American Trust Administrators, Inc. - TPA	Overland Park, KS	Added DBA ATA America	10/30/06
Delta Dental Plan of California - TPA	Sabn Francisco, CA	Delta Dental of California	10/30/06
Financial Administrative Services Corporation - TPA	Englewood, CO	Fascore, LLC, Greenwood Village, Colorado	10/30/06
Gallagher Benefit Administrators, Inc. - TPA	Itasca, IL	American Administrative Group, Inc., DBA AAG American Administrative Group, Inc., Lisle, IL	10/30/06
Bankers Multiple Line Insurance Company	Chicago, IL	R.V.I. National Insurance Company, Stamford, CT (Charter Amend)	11/03/06
Advance Insurance Company	Phoenix, AZ	Wellcare Health Insurance of Arizona, Inc.	11/07/06
American Re-Insurance Company	Wilmington, DE	Munich Reinsurance America, Inc.	11/08/06



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