House Insurance

February 28, 2023

ADVOCACY UPDATE
TAHP

Roll Call

Oliverson, Tom - Chair - Present
Johnson, Ann - Vice-Chair - Present
Cain, Briscoe - Present
Paul, Dennis - Present
Perez, Mary Ann - Present
Cortez, Philip - Present
Harris, Caroline - Present
Hull, Lacey - Present
Johnson, Julie - Present

Resources

Hearing notice
Video of hearing

Invited testimony

Texas Department of Insurance

Cassie Brown, Commissioner of Insurance (06:53)
212.4 billion in premiums in 2021, Texas is the nation's 2nd largest market in the US, 7th largest in the world. Overview of TDI's role.

Jamie Walker, Deputy Commissioner (09:50)
Financial regulation division at TDI's primary duties involve the solvency surveillance of insurers and market conduct examination.

Insurance market can be divided into three segments- admitted market, surplus lines market, and captive market. Each type of insurer in these markets are regulated differently.

Admitted market companies are the most highly regulated insurers. Covers home, auto, life, and health insurers that consumers most frequently interact with. Starts with the financial regulation division. With insurers, we form and license the companies and are responsible for the solvency regulation of 417 domestic admitted insurers. 1920 licensed foreign insurers in Texas, 2337 total admitted carriers. Division staff allocate significant time to understanding each domestic insurance company's business models. While concerned with the current position, equally concerned with the identification, management, etc, of risk going forward. Open-door policy to meet with insurers when requested.

Surplus lines insurers. Purpose for these insurers is to write unique risks not available in the admitted market. 270 surplus lines insurers registered in Texas.

Captive insurance market allows businesses to use a captive insurer as an alternative to, or in conjunction with, buying insurance policies directly from an admitted surplus lines insurer.

Debra Diaz-Lara, Life and Health Commissioner (21:20)
Life and health division consists of several teams: form review, actuarial review, managed care quality assurance, regulatory initiatives, and training data collection of metrics.

Form review unit reviews arms for all life, annuity and credit policies, accident and health policies, and advertising products. Regulates major medical, including health maintenance organizations or point of service plans, preferred provider benefit and exclusive provider benefit plans and short term limited duration plans. Review excepted benefit products include dental, vision, accident only, specified disease, disability income, Medicare supplements, long term care, etc. Also reviews self-funded benefit plans issued by multiple employer welfare arrangements and professional employer organizations. Review policies including term-life, permanent life, and life settlement policies, specific annuities and credit policies.

Texas is involved in developing compact standards and ensuring standards are at least as protective as Texas laws and regulation.

Does not regulate: private employer-self funded ERISA plans, state/local gov and church plans. This includes county and municity employee plans, TRS, state-university plans system, etc.

Only regulates solvency issuer providing public plans- Medicaid, CHIP, MA, Medicare drug plans, and military employee plans.

Actuarial team unit reviews rates for health, long term care, Medigap and life and annuity products. Responsible for implementing SB 1296 in 87th Lege Session, to begin reviewing individual and small group market rates for compliance with state and federal requirements for 2023 plan year. Completed 3220 rate filings last year.

Rural counties are now included in rating areas that reflect the cities where they are most likely to seek care. Rules also require issuers to apply uniform rating factors to silver on exchange plans to accurately reflect the cost of cost sharing reductions. Higher silver rates, higher subsidiary amounts, and increasing purchasing power for consumers. Has increased enrollment, etc.

Also seen growth in the individual market in the past few years due to expanded federal subsidy amounts. Over 2 million in 2023. 17 issuers on the exchange.

Managed care quality assurance unit is responsible for network adequacy, provider contract reviews, certified workers compensation health care networks, certifying or registering utilization review agents, and assigning independent review requests for non compliant ACA plans and workers compensation plans.

Network adequacy standards are set by statute and rule and provide contract radius for providers. If the plan fails to meet network standards, then the access plan is filed. Only available when no providers are available for required mileage radius or they were not able to negotiate a contract with available providers. Explains when assessed.

Quality of care market conduct exams are done by the market conduct team every three years. Balance billing can still occur for several reasons like involuntary out of network use such as ER.

Regulatory initiatives unit is responsible for legislative bill monitoring, developing rules and plans, etc. Recently conducted a survey of health carriers regarding gold carding for utilization review. Still compiling data. On avg, 85% of PA requests in 2021 were approved. No consistent trend of increase or decrease in number of services subject to PA following the implementation. Exemption approved 74% of time when qualified for one.

Mark Worman, Property and Casualty Commissioner (28:38)
Regulates homeowner insurance, vehicle verification program, holds the inspection office, etc.

Julie Johnson and **Walker** discuss the rate of carriers leaving the state due to financial insolvency in other states and what happens to the policyholders, dealing with property and casualty.

J. Johnson: With respect to health insurance- relating to network adequacy and gold carding. About implementation of the gold carding statute, concerned it's not working. Asked about TDI rules and implementation process.
Diaz-Lara: Rule does include a threshold of minimum of 5 pre-authorizations; 6 month period. Threshold of 5 set by TDI. 6 months is a statutory requirement.
J. Johnson: Why are these 5 pre-authorizations set in place by TDI?
Diaz-Lara: When initially proposed this rule, we landed on this based on comments we received.
J. Johnson: Insurers don't want to have gold cards. Removing PA burdens for physcians is important for patient access. What is TDI doing to ensure health insurance companies are adequately implementing gold card standards and improving delays for approving physicians for gold cards?
Diaz-Lara: We've requested complaint data for those providers having a difficult time, we need to know where barriers are for providers. No specific trend in the survey. Only 3.3% of providers receive a gold card based on this survey result.
J. Johnson: Low number. Obviously we need to evaluate this as the session goes on, like we can do.

J. Johnson: Last question; network adequacy. I'm very concerned about this. What data do you have in terms of how many waivers of health care insurance apply to you, of network adequacy? Especially in urban areas, it's easier to understand in rural areas.
Diaz-Lara: Currently have 65 HMO networks, 57 of those have access plans. 114 PPO networks, 102 of those have access plans. 30 EPO networks, 30 of those have access plans. Access plans can only be reached from one of two ways: no providers available in the service area, or the plan could not contract with the available providers. Don't have authority to compel either carriers are providers who contract, so access plan tells us how they're going to resolve the issue, how many providers did they attempt to contract with. We then reach out to those providers to ensure they were actually offered contracts. Have to tell us how they will resolve payment. Access plan is not perfect, but allows us to have health care throughout the state.
J. Johnson: Access plan is when we don't have enough physicians in our network, so this is our plan to deal with it? Sometimes people need to travel, largely for speciality care.
Diaz-Lara: Correct. Doesn't cover every provider. Allows companies to tell us how their enrollees are gonna get care.
J. Johnson: Having to travel for care under health insurance is a burden. Travel expenses aren't covered?
Diaz-Lara: In some instances.
J. Johnson: Vast majority of plans in state have access plans, basically because they don't have complete network adequacy, so they have these plans in place with TDI to deal with it. Even though many of them are housed within significant urban areas with specialists available, we're allowing these health insurance companies to not have adequate networks.
Diaz-Lara: Bulk of access plans are there because of hospital based providers- ER, anesthesiology, etc. Most of these providers will not contract with the plans and in many instances they have exclusive contracts with the hospitals, so no other doctors can practice there.
J. Johnson: Network adequacy for work-comp. Crisis. What does TDI do to regulate this?
Diaz-Lara: We do certify workers compensation health care networks. Same standard requirements as group health plans would follow.

Oliverson: Talk about budget as an agency- how are you all funded?

Brown: Funded through maintenance tax. Self-leveling fund. Reduction in TDI's budget does not result in savings to GR, because we are the dedicated fund 36. This also funds division of workers compensation.

Oliverson: File and use system. Can you briefly explain different systems for approving plans, etc?
Worman: Most states are file and use. Not familiar with many systems that have prior approval systems in place. The Commissioner does have authority to order prior approval for certain rates but it's very limited circumstances. For us, we can disapprove rates when filed, but disapproval authority is limited to 30 days from when filed, or prior to the effective day of that rate, whatever is earliest.

Oliverson: Surplus lines. Do we know what the trend line is with this- increasing or decreasing? Give a snapshot.
Walker: Policies are required to be filed with the stamping office. Premiums have increased over the past few years in that market. Item counts have gone up and down. Can get more data there.
Oliverson: Surplus lines are basically there to provide a backstop, is there stability in those percentages in that marketplace? I'm interested in changes over time, etc.
Walker: Can provide that data.

Oliverson: Rutledge decision with PBM's, ERISA- what is the agency's thought process as far as these significant passed legislative reforms. Seems to be a cracked door here to the possibility that states may have a bigger role in regulating self-funded entities, what do you all think about your regulatory power here?
Brown: Happy to have further conversations with you. Current job is to implement the laws you all pass. HB 1919 passed last session regarding PBM's. Have complaints regarding that law. Stay tuned.

Oliverson: With respect for plans out of state- Texan might have access to a plan not in this state. Seems to be a gray area in terms of where states regulatory power is, especially in respect to surprise billing, etc. Surprise Billing ET issue. Can you tell us about your background here, what you all were trying to work through?
Brown: Save for later panel.

Oliverson: Rate review, buying power enrollment, ACA. Second largest in terms of number of subscribers, behind Florida?
Brown: 2.4 million individuals on federal exchange.
Oliverson: Covers a lot of people. 17 issuers on this exchange. How do you feel about how it is compared to other states? Is this a great place to do business?
Diaz-Lara: We are hands off here, other than the rate review piece. Have seen improvements- more companies in more parts of the state, and more enrollment.
Oliverson: Raise premiums on the silver level, which ends up making premiums more affordable for everyone else? In the way the ACA was written, a premium subsidy that a person is eligible for is calculated based on premiums that's charged with silver plans, right?
Diaz-Lara: Correct.

Oliverson: Network adequacy side. What is the longest an access plan has been in effect without being resolved? Once the network is adequate, the access plan goes away right?
Diaz-Lara: These are only good for a year. Would have to see what the longest has been.
Oliverson: When you are looking at the data with the access plan- you are taking their words on it. Do you guys ask for what is offered in the market? Do you have access to average market rates?
Diaz-Lara: Don't have access to that.
Oliverson: If you did have access, you could see if it was a good faith effort or not a good faith effort.

Brian Ryder, Senior Actuary (1:02:00)
Overview. Actuaries in TDI work in two areas. Insurance rates and financial solvency.

Randall Evans, Deputy Commissioner, Customer Operations (1:04:55)
Customer operations division. Work with consumers and entities. Answered 129 million customer calls last year.

Cindy Wright, Director, Consumer Protection and Services (1:07:34)
Under Texas Insurance, TDI operates a complaint/resolution program. Over 87% complaints in 2022 were received through the portal. Breaks down process; within two

days, agency staff provides information to the respondent. Resolution time average was about 30 days. Complaint processing and IDR work hand in hand.

Leah Gillum, Deputy Commissioner for Fraud and Enforcement (1:12:10)
Investigate fraud including that of health care, often dealing with billing and unauthorized insurance. Enforcement investigations are civil and administrative. 7.3 million dollars in administrative penalties.

J. Johnson: 234,872 people filed complaints for assistance with balance billing. Because they had medical care that was out of network, correct?
Wright: That figure is the number of requests in 22 fiscal years that came through our IDR portal. Health care providers use this to work with health plans to resolve billing disputes.
J. Johnson: In-network providers, they have contracted rates.
Wright: IDR intended to resolve out of network billing disputes.
J. Johnson: That's my point. Recovered 936 million dollars in payments due to out of network problems.
Wright: Settlements that health care providers reached with any health care plans.
J. Johnson: Wouldn't have been necessary had those medical providers been in-network.
Wright: Yes, because there would have been an agreed upon price.

Price: Can we get these numbers on IDR sent to our office. Do you know what services these were?
Wright: Don't associate services to claims in the system, but we do capture the type of provider that has submitted the complaint.
Price: That would be helpful if you include that.

Office of Public Insurance Counsel

David Bolduc, Acting Public Counsel (1:21:00)
Interest of Texas consumers. Review regulatory matters in conjunction with TDI. Work with companies to prevent reduction in coverage. Act as a resource for the legislature. Funding is similar to TDI's. Have an educational contract with TDI.

Issues that might be of interest. Appraisals; insurers starting to eliminate right to appraisals. Rates in general going up; inflation and cost of building/fixing things. Claims handling is always an issue, especially seen in storm coverage.