TAHP
The Texas Association of Health Plans

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

December 9, 2024

Re: Proposed Amendments to 28 TAC §3.505, Required Rate Filings

Texas Department of Insurance,

As the statewide trade association representing health insurers, HMOs, Medicaid managed care, and other health plans that serve over 20 million Texans, the Texas Association of Health Plans (TAHP) is committed to ensuring that Texas families and employers have access to affordable, comprehensive, and high-quality coverage.

We are writing today in opposition to the proposed changes to 28 TAC §3.505. While we do support raising the cost-sharing reduction (CSR) factor from 1.35 to 1.4, our members are concerned about the impact of requiring the use of the Federal AV Calculator (FAVC) to develop rates. This federal tool was never intended to be used for plan pricing and is not designed and vetted to correctly achieve this need. It is simply a plan comparison tool available as a reference point for shoppers. Mandating the FAVC to be used as a pricing tool results in less flexibility in plan design and less consumer choice.

Even more concerning, the result will be limiting affordable options available to consumers that have incomes just above the threshold to qualify for additional cost sharing reductions. The health and strength of the individual market today in Texas is built on affordability and choice. This proposed rule works against the continued success of the market by undercutting the most affordable plans on the market. Our association is advocating for another solution that will still meet TDI's goals but will not unnecessarily harm Texas consumers.

The FAVC was not developed to be a pricing tool. The Actuarial Standards of Practice ("ASOP") #50 and the Final 2026 Actuarial Value Calculator ("AVC") Methodology discuss the intended use of the FAVC as a plan design comparison tool. Both guidance documents explicitly state the FAVC output is not intended to be used for pricing:

> **ASOP #50**: *"The AVC and MVC are not intended to be used as pricing tools. As a result, two plan designs with the same Federal AV/MV may not have the same premium for the reasons stated above. The intent of the AV and MV calculation process is to apply a standardized population and cost structure."*
>
> **AVC Methodology:** *"The AV Calculator is intended to establish a comparison tool and wasn't developed for pricing purposes."*

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Because the FAVC was not intended as a pricing tool, using its output for pricing may lead to inappropriate and actuarially unsound pricing. Currently, plans in Texas and in most other states are able to use their own experiences to develop their own pricing. Requiring carriers to use the FAVC to set the price of premiums is a one-size-fits-all price control that will limit the number of products a carrier can provide at different prices, thus limiting options for Texans of different economic means.

The federal requirements for determining a metal level plan are strict, so an unintended consequence of using the FAVC comparison tool to set prices is that plans are forced to use a very narrow AV range. As a result, this proposal would cause carriers plan offerings within a metal level to fall within a few percentage points and produce plan premiums that are not meaningfully differentiable. Additionally, because the calculator was never meant for government price setting, there are a number of issues with its accuracy. Specifically in the context of Bronze plans, the AV calculator undervalues certain benefits. An issuer that sells a richer Bronze plan at the lower FAVC price would then have to choose between either raising the premiums on its other products or discontinuing the richer Bronze plan entirely. As a result, popular benefit-rich Bronze plans with zero-dollar deductibles, for example, would be eliminated from the market, eliminating affordable options for Texas consumers.

In the preamble to the rule, the department states using the FAVC will support compliance with the single-risk pool requirements by prohibiting plans from using health status when setting their plan-to-plan variations. However, this is unnecessary. Federal rules already expressly prohibit the consideration of health status in rate making. The Unified Rate Review ("URR") instructions include the following language for AV and Cost Sharing Design: "This factor should not include adjustments that take into account the morbidity of the population expected to enroll in the plan." In other words, plans are already prohibited from considering health status.

Most carriers have their own pricing AV calculators. Carriers could compare the sufficiency or deficiency of their own model results to the FAVC and shift the differences into other allowable rating factors. Carriers have different allowed amounts, negotiated networks, plan discounts, experience, medical and drug trends, and other factors that could result in different pricing AVs than their competitors. While we agree that plans should not be considering the morbidity of expected enrollees, requiring all carriers to use the same pricing AVs would be inappropriate and unnecessarily restrict flexibility and diversity in benefit options.

We do agree with the agency's stated goal of ensuring that rates are developed in a way that supports a level playing field. However, there are other approaches that would accomplish the

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same goal and are more in line with Actuarial Standards of Practice. For example, every carrier is required to offer a standard plan in each metal level they operate. These plans are consistent across carriers and every benefit is richer than its lower metallic counterpart. A better approach would be for TDI to ensure these priced AVs are increasing from metal to metal in standard plans.

A second option that achieves the same goal without restricting consumer choice and limiting plan design options, TDI could modify the existing AV Cost Sharing Design Template—which is currently required as part of rate filings—to reduce manipulation of priced AVs. The agency could adopt a permissible deviation, such as 5%, from the slope of the standard federal AVs, and then use the objection process to seek appropriate justification for any outliers. An example of the modified template is below.

Example

AV and Cost Sharing Design of Plan (3.3) Components

Plan ID (1.4)	Metal (1.5)	Plan Type (1.8)	Exchange (1.9)	Standard Plan	AV & CS (3.3)	Pricing Actuarial Value (AV)
12345TX1234568	Bronze	EPO	Yes	No	0.7210	0.721
12345TX1234569	Bronze	EPO	Yes	No	0.7000	0.700
12345TX1234570	Bronze	EPO	Yes	Yes	0.6910	0.691
12345TX1234574	Silver	EPO	Yes	No	1.0234	0.736
12345TX1234575	Silver	EPO	Yes	No	1.0012	0.720
12345TX1234576	Silver	EPO	Yes	Yes	1.0026	0.721
12345TX1234572	Gold	EPO	Yes	No	0.8662	0.802
12345TX1234573	Gold	EPO	Yes	No	0.8770	0.812
12345TX1234571	Gold	EPO	Yes	Yes	0.8586	0.795

Note: Insert additional rows if needed

Input
Auto-filled

Issuer Standard Plan Priced AV

Bronze	0.691
Silver	0.721
Gold	0.795

Increasing Slope Check	TRUE
Permissable Deviation	5%

Formula:
=AND(B33>B32,B32>B31)

Metal Slope	Priced Standard Slope	Fed AV Standard Slope	Permissable Slope Check
Silver | Bronze Slope	1.043	1.087	TRUE
Gold | Silver Slope	1.103	1.115	TRUE

Formula:
=AND(B39>C39B36,B39<C39+B36)

Could also be applied multiplicatively

Formula:
=B32/B31

Fed AV of Silver Standard plan / Fed AV of Bronze Standard plan

= 70.01% / 64.42%

This solution would avoid the potential negative consequences of mandating the FAVC while still achieving its goal of ensuring a level playing field. Requiring plans to report the deviation from federal AVs, and then adopting a permissible range of deviation, would minimize administrative

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burden for compliant issuers. The agency could then use its existing discretion to address outliers through the objection process.

We appreciate the opportunity to comment on this proposal and the agency's willingness to discuss the matter further.

Sincerely,

Jamie Dudensing

Jamie Dudensing, RN
CEO, Texas Association of Health Plans