Texas Department of Insurance Biennial Report to the 85th Legislature

Texas Department of Insurance
December 2016

Texas Department of Insurance
333 Guadalupe | Austin, Texas 78701
(800) 578-4677
www.TDI.texas.gov

First printing, December 2016
Publication ID: TDIBR | 1216
This document is available online at www.tdi.texas.gov/reports

TEXAS DEPARTMENT OF INSURANCE
Commissioner of Insurance (113-1C)
333 Guadalupe, Austin, Texas 78701 ★ PO Box 149104, Austin, Texas 78714-9104
(512) 676-6020 | F: (512) 490-1045 | (800) 578-4677 | TDI.texas.gov | @TexasTDI

December 13, 2016

Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Joe Straus, Speaker of the House

Dear Governors and Speaker:

In accordance with Texas Insurance Code, Section 32.022, I am pleased to submit the biennial report of the Texas Department of Insurance (TDI). As required by law, the report summarizes needed changes in the laws relating to regulation of the insurance industry.

In preparing this report for the 85th Texas Legislature, TDI staff solicited input from both agency staff and stakeholder groups to ensure an open and collaborative process for developing legislative recommendations. The changes requested in TDI's biennial report reflect the input received during that collaboration and cover a wide variety of insurance issues in Texas, including financial modernization, consumer protection, and updates to the Texas Insurance Code.

Thank you for the opportunity to provide this information and for your consideration of this report. Please contact me or Melissa Hamilton, Director of Government Relations, at (512) 676-6605 with any questions or if you need additional information.

Sincerely,

David C. Mattax
Commissioner of Insurance

table of contents

Governance

The commissioner of insurance is the chief executive of the Texas Department of Insurance (TDI). The governor appoints the commissioner subject to Senate confirmation. The commissioner enforces applicable state insurance laws. The current commissioner, David Mattax, has served since his appointment by Governor Abbott in January 2015.

Economic and Demographic Factors

The Texas insurance market has been growing rapidly in recent years and now represents the ninth largest insurance market in the world. This growth can be primarily attributed to the performance of the Texas economy and the resulting population growth and job creation. In addition, Texas is perceived as a preferred location by insurance industry participants, as evidenced by new market entrants, insurance carrier mergers, and insurers relocating to Texas. TDI's goal in this evolving and growing marketplace continues to be fostering a stable, competitive, and healthy environment for insurers to provide quality insurance products that satisfy consumer demands. Achieving this goal requires an innovative and flexible regulatory approach. TDI is also helping Texas assume a lead role in setting the financial standards for international, national, and state insurance regulation.

Protecting Texas' Authority: Federal and International Pressures

State-based insurance regulation dates back to the mid-1800s, and in 1871 state insurance regulators formed the National Association of Insurance Commissioners (NAIC) to coordinate regulation among the states. However, the federal government is showing an increased interest in regulating insurance, as evidenced by the Affordable Care Act and the creation of the Federal Insurance Office as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act also empowered the Federal Reserve to regulate holding companies of certain insurers, including a number of Texas companies. For example, the Federal Reserve has proposed capital and other regulatory requirements that would apply to the holding companies of certain Texas insurers and may create conflicts with Texas' statutory authority.

International developments may also impact Texas' authority. The Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, has provided direction to the International Association of Insurance Supervisors (IAIS) to develop global insurance regulation standards, which can form the basis for subsequent federal preemption of state laws. In addition, the Federal Insurance Office and the U.S. Trade Representative are negotiating a covered agreement with the European Union that has the potential to preempt Texas' statutory authority.

TDI wants to preserve the state's valuable role in insurance regulation by making sure Texas' voice is heard and that standards developed by the NAIC and IAIS are right for Texas and state-based regulation. In order to achieve this goal and protect Texas' current insurance regulatory authority, Commissioner Mattax sought and obtained membership on the executive committees of the NAIC and the IAIS.

NAIC Model Laws

The insurance commissioners of the 50 states, District of Columbia, and five U.S. territories develop regulatory best practices in the form of NAIC Model Laws. These model laws reflect the collective experience and expertise of the regulatory community and are developed over a period of time with input from the insurance industry and consumer advocacy groups. Model laws, however, have no effect until a state legislature passes a bill to codify them.

NAIC Accreditation

The most important NAIC model laws related to solvency regulation are required by the NAIC's accreditation program. The NAIC developed the accreditation program in the early 1990s when insurer insolvencies in the U.S. were hitting record numbers. Due to the mass insolvencies and the potential federal takeover of insurance regulation, the states took steps to both enhance solvency regulation and coordinate among themselves in order to improve the overall integrity of the U.S. insurance market. These efforts evolved into the accreditation program that exists today.

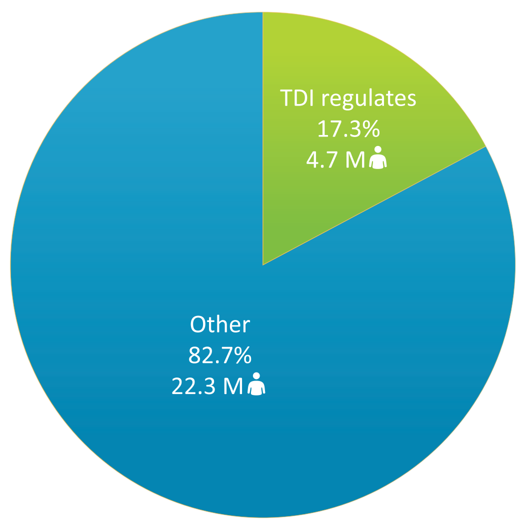
A state is accredited when the state's legislature and insurance regulator have adopted the required solvency laws and regulations. While the accreditation program is voluntary, insurance companies domiciled in an accredited state enjoy time and cost-saving benefits as a result of the state's accredited status. An accredited state has regulatory credibility with its fellow states because those states have confidence in the integrity and strength of the state's solvency regulation. As a result, other states largely defer to an accredited state's regulation of its domestic insurance companies. This deference to an accredited state's regulator allows the domestic insurers in that state to deal with one primary financial regulator, instead of 50, and that efficiency results in lower costs of regulatory compliance. Texas received its accredited status in 1993, which it maintains today.

This report contains several legislative recommendations aimed at maintaining TDI's accreditation. They include: adopting the updated credit for reinsurance model law, clarifying financial examination confidentiality, removing enterprise risk report filing exemptions, and amending the holding company act.

Responses to Changing Health Care Landscape

The health care market continues to respond to the implementation of the Affordable Care Act and other changes. TDI's ability to respond to health care market changes is limited by increased federal government regulation and by the amount of the market over which TDI retains regulatory jurisdiction. As illustrated in the chart, TDI can only assist 17.3 percent of Texans, or about 4.7 million people. The remaining 82.7 percent of Texans are uninsured or have insurance overseen by other entities, such as the U.S. Department of Labor, Texas Health and Human Services Commission, Texas Employees and Teacher Retirement Systems, and Centers for Medicare and Medicaid Services. TDI's limited regulatory jurisdiction creates challenges for the agency and the Texas Legislature as we work together to develop rules and statutes that will help protect Texans.

2015 Health Coverage in Texas



Texas Windstorm Insurance Association

TDI placed the Texas Windstorm Insurance Association (TWIA) under administrative oversight in 2011 after Hurricane Ike claims and related litigation stretched its resources. TDI subsequently helped TWIA improve its operations and management team. Commissioner Mattax appointed new members to TWIA's board of directors after Senate Bill (SB) 900, enacted by the 84th Legislature, changed the board's composition. TWIA has benefited from enhanced funding mechanisms and an absence of hurricane losses and now reports an estimated maximum funding capacity to protect against a 1-in-100 year storm. TDI released TWIA from administrative oversight on April 8, 2016, subject to special ongoing reporting requirements. TDI developed rules and continues to work closely with TWIA to implement SB 900.

SB 900 also required TDI to conduct a market incentives study to promote participation in the voluntary windstorm and hail insurance market in the seacoast territory. As a result, TDI sent a survey on possible incentives to 81 insurers in February 2016 with responses due on April 18, 2016. The summary of the market incentives study can be found in Section 3 of this report.

Insurance Taxes and TDI Funding

Insurers pay two kinds of insurance taxes in Texas, premium taxes and maintenance taxes.

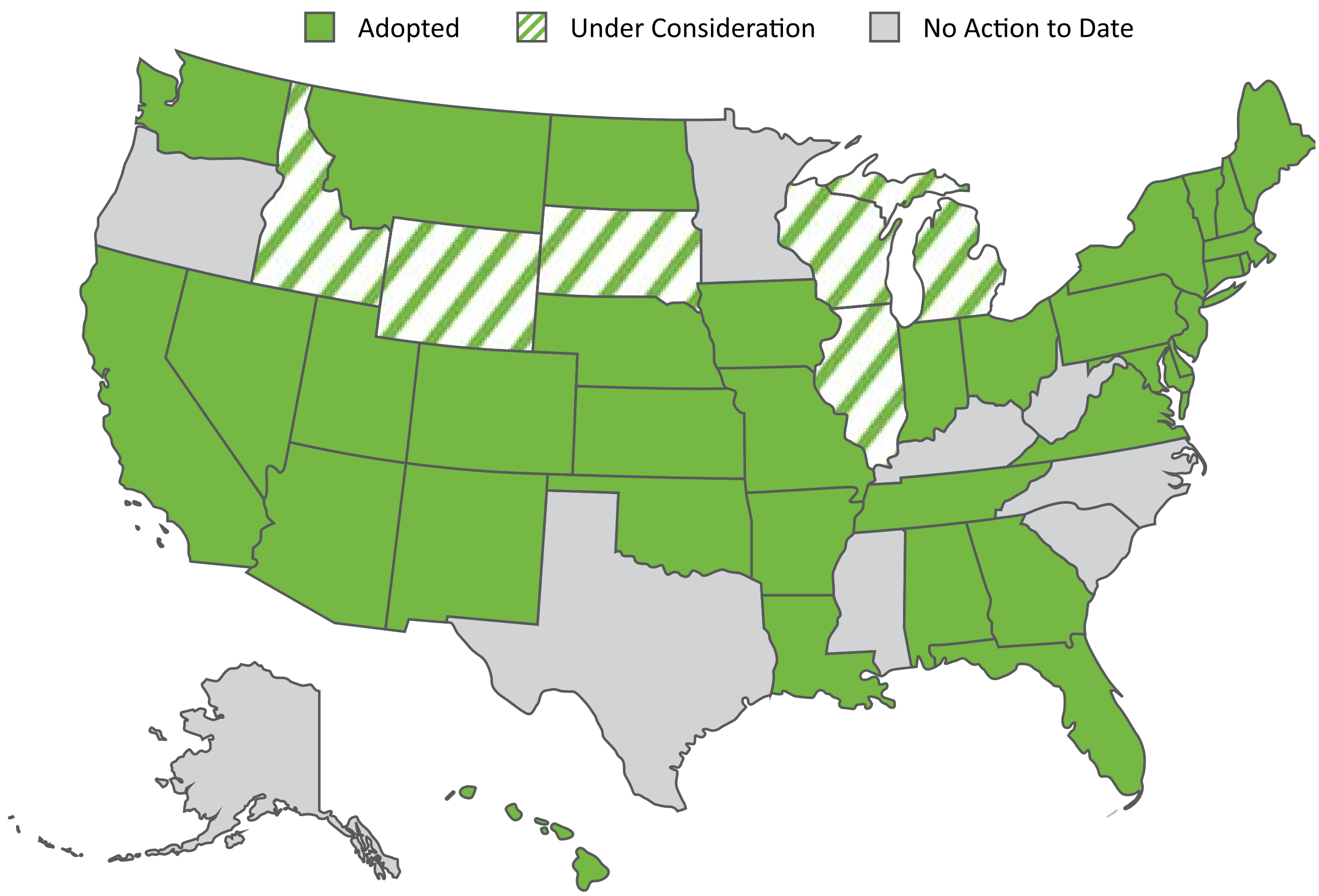
- **Premium Taxes:** Insurers pay premium taxes to the state, which are deposited into General Revenue Fund 1, for the state's use. The Legislative Budget Board projects insurers will pay almost $4 billion in state premium taxes in the 2016-17 biennium.
- **Maintenance Taxes:** Insurers pay maintenance taxes and regulatory fees that fund TDI and its operations. These maintenance taxes also provide funding for other state agencies, including the Texas A&M Forest Service, Office of Public Insurance Counsel, Department of Health Services, Office of the Attorney General, Texas Facilities Commission, and Texas Department of Transportation. The Legislative Budget Board projects insurers will pay approximately $285 million in maintenance taxes in the 2016-17 biennium.

As a result of the maintenance taxes and regulatory fees, TDI is funded by the insurance industry that it regulates. TDI is not supported by funding that can be used for general state purposes. Because of the self-leveling nature of TDI's operating account, changes in appropriations from TDI's operating account do not affect the funds available for general revenue.

Biennial Recommendations

The remainder of this report sets forth TDI's legislative recommendations to the 85th Texas Legislature, as required by Texas Insurance Code Section 32.022. The report contains 10 recommendations to improve insurance regulation in Texas.

Implementation of 2011 Revisions to Credit for Reinsurance Models



* As of December 1, 35 states, representing 68 percent of the U.S. insurance market, have adopted the NAIC credit for reinsurance model act, and six others are currently considering the model act as legislation. Only nine states to date have taken no action.

Issue:

Insurers must hold reserves in amounts sufficient to pay insured claims and benefits. Insurers also use a financial tool known as reinsurance. Reinsurance is insurance that insurers buy from other insurers. Reinsurance allows insurers to increase their capacity to sell more insurance and to protect their own solvency and liquidity. If done in compliance with state law, companies that purchase reinsurance may reduce their reserves. This reduction in reserves is essentially an accounting feature called "credit for reinsurance." To the extent reinsurance is regulated, the regulation largely focuses on whether an insurance company is allowed to reflect "credit for reinsurance," and thus reduce its reserves.

Texas law regarding reinsurance is becoming outdated and unnecessarily restrictive on insurers and the Texas marketplace. The current laws were enacted over 25 years ago. Current Texas law requires that reinsurers domiciled in other countries post 100 percent collateral without regard to the financial size and strength of the reinsurer. Licensed reinsurers domiciled in the U.S., however, do not have to post 100 percent collateral regardless of their financial size and strength. This disparate treatment based on jurisdiction is problematic since most of the world's strongest reinsurers are located in other countries and can provide U.S. insurers with some of the most cost-effective and reliable reinsurance in the market. Moreover, the reinsurance collateral is not used to pay insurance claims in the majority of cases. Rather, it represents trapped capital that cannot be used for other purposes. As a result, the current law creates an unnecessary regulatory burden that increases insurance costs, which are passed on to consumers through higher premiums.

An alternative approach is to allow certain, certified reinsurers to qualify to post less collateral. This alternative allows insurers who buy reinsurance the option to require 100 percent collateral if they want, but also gives insurers the option to require less collateral if that is a better business decision for them and their policyholders. This approach to credit for reinsurance is outlined in updated model act legislation developed by the 50 states working together through the NAIC. Under the updated reinsurance model, reinsurers with less financial strength, or those domiciled in jurisdictions that do not have a demonstrated history of honoring U.S. judgments, will still have to post 100 percent collateral. Reinsurers, who meet both stringent financial requirements and reside in a jurisdiction with an established history of honoring U.S. judgments, will be able to post less than 100 percent collateral in cases where the insurer allows them to do so. The new model is not only better regulation, it is also benefits Texas insurers and consumers. Insurers should be able to negotiate better terms and pricing for their reinsurance, which, in turn, should increase their capacity to sell more insurance, and mitigate inflationary pressures on rising insurance costs.

Florida and New York were both strong advocates for the new approach to credit for reinsurance for this very reason. After New York suffered the terrorist attacks on 9/11 and Florida experienced several hurricanes in 2005, both states found capacity in their markets constrained by the lack of affordable reinsurance available to insurers. This led to an increase in the cost of homeowners' and commercial insurance in those two states. Florida also experienced explosive growth in their homeowner insurer of last resort. Florida, New York, and numerous other states, adopted the new approach to credit for reinsurance, which proved to be a common sense solution to their market availability and affordability issues.

The NAIC found the updated credit for reinsurance model act to be essential to reinsurance regulation and made the updated model act an accreditation requirement for all state insurance departments, effective January 1, 2019. Accordingly, in order to maintain accredited status, states will have to adopt the updated credit for reinsurance model law within the next two years.

Recommendation:

Adopt the updated NAIC credit for reinsurance model act.

Issue:

Current Texas law provides that TDI's financial examination reports, and related information obtained from insurers during a TDI examination, are confidential and not subject to disclosure under the Public Information Act. The agency's historical practice has been to treat this information as confidential for all purposes, including subpoenas. Subsequent statutes, such as the Insurance Holding Company Systems and Own Risk and Solvency Assessment Acts, have codified that confidentiality treatment in the Texas Insurance Code. The confidentiality provision for financial examinations in Texas Insurance Code Section 401.058(a), however, has not been similarly updated.

A revision to this section of the code will ensure consistency and clarity throughout the Insurance Code with regard to confidential financial information. The consistency and clarity of confidential information is critical to TDI's regulation of insurers, because it facilitates the exchange of sensitive financial information between TDI and insurers. TDI must have complete access to this financial information in order to make determinations about an insurer's solvency and adequately protect consumers.

Recommendation:

Amend Texas Insurance Code Section 401.058(a) to clarify that examination reports and related information obtained during TDI's financial examinations of insurance carriers are not subject to subpoena.

Issue:

Enterprise risk reports identify material risks within a group of affiliated companies that may spread to other parts of the group and, thereby, negatively impact the affiliated insurance companies. Texas was the second state in the nation to adopt enterprise risk report filing requirements in 2011. The Texas requirements include provisions to exempt insurers with less than $300 million in premiums from filing enterprise risk reports. Since 2011, all other states have adopted enterprise risk report filing requirements and have largely rejected any filing exemptions because an insurer’s size does not insulate it from the actions of affiliates that could affect the solvency of the insurer and ultimately harm policyholders.

In addition, the exemptions place an unnecessary regulatory burden on Texas-based insurers. Since Texas law is not consistent with other states, a Texas-based insurer licensed in other states may be required to file an enterprise risk report in each of those states and is subject to additional regulatory scrutiny by each of those states. This multi-state burden would be eliminated by removing the current Texas exemptions. Thereafter, Texas-based insurers would only be subject to the filing requirement in Texas, as Texas law will align with other states’ nationally recognized standards for enterprise risk reports and financial solvency regulation.

Recommendation:

Remove the enterprise risk report filing exemption.

Issue:

TDI's core functions include monitoring the financial condition of insurance companies to ensure companies have sufficient capital, i.e., are solvent, and can thereby pay policyholders' claims. TDI utilizes many regulatory tools to monitor company solvency. One of the most important tools is the Insurance Holding Company Systems Act (Holding Company Act), which regulates certain activities of insurance holding company systems.

Holding company systems, or groups, are now the most common form of ownership structure in the insurance industry. These groups encompass not only insurance companies, but also multiple types of affiliates, such as banks and securities firms. These multiple types of affiliates and their financial condition can impact the financial condition of affiliated insurance companies, which is a primary reason for the Holding Company Act and its solvency monitoring provisions.

International regulators are threatening to enforce group-wide regulatory requirements on U.S.-based insurers that are internationally active due to the absence of explicit statutory authority for a state to serve as the group-wide supervisor of the insurer, even though states often serve in this role in practice now. The threatened actions by international regulators would impose additional layers of regulatory requirements that potentially conflict with Texas laws and increase costs.

An amendment to the Holding Company Act would establish the authority and framework for the Texas insurance commissioner to act as the group-wide supervisor for certain internationally active insurance groups. This would allow Texas to become the primary regulator, or supervisor, of an internationally active insurance group that prefers to be regulated by Texas rather than another jurisdiction. Very few Texas-based insurers would be subject to this proposal as most do not meet the definition of an internationally active insurance group. However, this amendment provides a regulatory framework that gives Texas-based insurers the option to have Texas serve as their group-wide supervisor instead of another regulator.

This recommendation also makes Texas an attractive relocation destination for large, internationally active insurance companies that want to mitigate actions by other regulators and work within the Texas regulatory system.

Recommendation:

Amend the Holding Company Act to grant the authority and framework for the commissioner to exercise discretion to serve as an insurer's group-wide supervisor for an insurer that wants Texas to serve in this role.

Issue:

Surplus lines insurance is a unique form of insurance that provides coverage for individuals and companies who cannot obtain insurance coverage from traditional insurers because of the risks they are seeking to insure. Risks sold in the surplus lines market generally fall into three broad categories: (1) non-standard risks; (2) unique risks with unusual underwriting characteristics; and (3) excess capacity risks where a policyholder seeks a greater amount of insurance coverage than traditional insurers will sell. For example, insurance on an oil refinery may not be available from a traditional insurer, and thus the insurance is obtained from a surplus lines insurer.

Surplus lines insurers are subject to less regulation than traditional admitted market insurers. For example, neither surplus lines rates, nor their policy forms, are subject to regulation. Similarly, surplus lines policies do not provide the same level of consumer protections that traditional policies offer, such as state guaranty fund coverage in the event of the insolvency of the surplus lines insurer.

In 2014, the Texas surplus lines market represented approximately 10 percent of the Texas property and casualty insurance market, but all $5 billion in premium surplus lines payments went to non-Texas based insurers. This occurs because current law only allows surplus lines insurers domiciled outside of Texas to insure risks in Texas. The law creates an economic disincentive to Texas-based insurance groups already selling other lines of insurance by forcing them to create or purchase a surplus lines insurer domiciled in another state or country.

By enacting legislation to allow Texas domestic surplus lines insurers to sell insurance in Texas, insurers can lower regulatory compliance costs and more premium dollars may stay in the state. Ten other states have enacted similar legislation.

Recommendations:

- Amend Texas law to allow a surplus lines insurer to be domiciled in Texas and insure Texas risks.
- Expand rule-making authority to authorize the commissioner of insurance to custom-design required policyholder notices.

Issue:

Unlike traditional health insurance, long-term care insurance is designed to provide a policyholder with coverage for support services, such as custodial care. Long-term care policies generally reimburse policyholders a daily amount, up to a pre-selected limit, to assist with living expenses once benefits are triggered at a specified point in their life.

Texas Insurance Code Section 1651.055 requires the commissioner to adopt rules relating to the stabilization of long-term care premium rates that existed on January 1, 2001. This reference to rate stabilization unnecessarily restricts companies' ability to accurately determine rates.

The long-term care insurance industry is a source of great concern, and a comprehensive solution must be developed to address what has become a national issue. The long-term care industry has experienced challenges with adequately pricing policies as a result of the unique nature of the product. Due to a variety of factors, including policyholders who continue to receive benefits under their policies longer than expected, insurers have had to seek rate increases to maintain the viability of their long-term care line of business.

Texas has granted actuarially justified rate increases for long-term care insurance in order to reduce the risk of insurer insolvency. Other states, however, have not allowed rate increases or have suppressed rates below what is actuarially justified. Accordingly, insolvencies of long-term care insurers may occur without changes to long-term care insurance regulation. Guaranty funds, such as the Texas Life, Accident, and Health Guaranty Fund, assume policyholder liabilities from insolvent companies. The guaranty funds then assess life and health insurers for any shortfall in funds. In Texas, those insurers are allowed to recoup the cost of that assessment via premium tax credits, which means that the state's general revenue could be negatively impacted by future insolvencies of long-term care insurers.

Recommendation:

Amend Insurance Code Section 1651.055 to ensure TDI has the ability to adopt rules that best address the challenges facing long-term care insurance in Texas.

Issue:

Mediation is a process for resolving disputes between two or more parties in which a mediator assists the parties to negotiate a settlement or resolution and serves as an alternative to court trials or other formal processes. In the context of health insurance, mediation is used when there are disputes between providers and insurance companies regarding the reimbursement or cost of certain health care claims. Mediation allows the provider and insurer to resolve the billing issue, so that the policyholder is not left to pay the "balance bill," or the difference between the amount the provider charged and the amount the insurer paid after deducting any coinsurance, copayment, or deductibles. While mediation is usually voluntary, Texas Insurance Code Chapter 1467, allows consumers to contact TDI and request mandatory mediation if their balance bill meets the following requirements:

- the health plan is a fully insured[1] preferred provider organization or exclusive provider organization, or a self-funded plan offered under the Texas Employees Group Benefits Act and administered by the Employee Retirement System;
- the balance bill is over $500; and
- the balance bill is from an out-of-network, facility-based anesthesiologist, emergency department physician, neonatologist, pathologist, radiologist, or assistant surgeon that provided services at an in-network facility (unless the physician provided an estimate of their charges in advance).

Under the current mediation process, a consumer, who receives a balance bill that meets these statutory requirements, fills out a mediation request form and sends it to TDI. TDI then contacts the provider and the insurance carrier or plan administrator. The statute requires these parties to participate in an informal settlement teleconference, which is most often a phone call. More than 90 percent of claims are settled during this exchange.

If the provider and the carrier or administrator do not settle the claim through the informal settlement teleconference, TDI forwards the mediation request to the State Office of Administrative Hearings, which assigns a mediator to help the parties reach an agreed resolution. If the parties do not reach an agreement, the matter may be taken to court in a trial by a special judge under Civil Practice and Remedies Code, Chapter 151.

TDI is concerned because some Texas consumers are not eligible for mandatory mediation since their health insurance coverage does not meet the statutory requirements above. These consumers can still be subject to balance bills.

Recommendation:

Amend Insurance Code Chapter 1467 to allow more consumers to use mediation for balance bills.

1 TDI only regulates fully insured health plans, which make up 17 percent of the Texas market.

biennial recommendation | expand mediation

Issue:

The Texas Insurance Code does not contain a definition of commercial property insurance. Creating a statutory definition clarifies the coverages that insurers can include in their commercial property policies. This clarification will be helpful to insurers filing policy forms or rates with TDI and will benefit insurers that sell commercial property insurance in multiple states.

Recommendation:

Create a statutory definition of commercial property.

Issue:

Senate Bill 14, enacted by the 78th Legislature, changed the rate regulatory system for automobile insurance in Texas from a promulgated benchmark rating system in which TDI set rates to a file-and-use system in which insurers file their rates with TDI and are allowed to use the rates unless TDI finds that the rates violate specific statutory prohibitions. Premium surcharge amounts for insured drivers were prescribed by TDI under Insurance Code Section 1953.052(a) as part of the benchmark rating system, and this part of statute still refers to the surcharges being in "an amount prescribed by the department." Since TDI no longer prescribes rates, the requirement in Section 1953.052(a) is obsolete.

Recommendation:

Amend Insurance Code Section 1953.052(a) to remove the clause "in an amount prescribed by the department."

Issue:

The Texas Health Reinsurance System (THRS) was created by the Texas Legislature in 1993 to provide reinsurance capacity to health carriers that issue small employer health benefit plans. Although THRS was active for a number of years, it no longer functions as intended by the legislature. The last risk reinsured by THRS terminated in July 2012, and they may not reinsure another risk in the future. There are currently three insurers or health maintenance organizations eligible to obtain reinsurance from THRS, and they have declined to do so.

Despite having no activity, THRS generated $35,345 in administrative expenses in 2015 through administrator fees, insurance expenses, audit expenses, etc. They also continue to consume TDI staff time and resources because of certain statutory requirements.

Due to the aforementioned facts, the THRS Board of Directors has previously recommended deactivating THRS, with the option to reactivate it if market changes make it necessary to do so. If implemented today, that recommendation would have a positive fiscal impact on THRS.

Recommendation:

Amend Insurance Code Chapter 1501 Subchapter G to provide the commissioner of insurance with authority to enter an order to deactivate THRS. It is also recommended that the commissioner be authorized to enter an order to reactivate THRS if needed, such as in response to a change in health care laws or future market capacity concerns.

TDI surveyed property insurers about incentives for writing wind and hail insurance in the seacoast territory. Some incentives could result in a modest increase–with other consequences–but none appear likely to promote significant growth in the voluntary market.

Background

TDI conducted a study of market incentives to promote participation in the voluntary wind and hail insurance market in the Texas seacoast territory.[2] Texas Insurance Code Section 2210.015 required the study to address as possible incentives the mandatory or voluntary issuance of wind and hail insurance in conjunction with the issuance of a homeowner's policy in the seacoast territory. TDI must include the results of the study in its biennial report.

TDI surveyed:

- the 30 largest residential property insurers[3],
- six of the smallest residential property insurers,
- four insurers that signed up for Texas Windstorm Insurance Association's (TWIA) voluntary depopulation program, and
- the 25 largest commercial property insurers and the 25 largest business owners insurers (41 insurers total).

Conclusions

It does not appear that any of the surveyed incentives would significantly increase the voluntary writing of wind and hail insurance in the Texas seacoast territory. A few insurers indicated potentially modest increases in writings but with other consequences. For example, being able to charge rates without competition from TWIA would encourage many insurers to increase their writings but the accompanying increase in rates appears substantial. Incentives based upon requiring insurers to write a proportionate share of wind and hail insurance in the seacoast territory could prove an effective incentive for some companies but would potentially reduce the participation of others. Insurers also recommended other potential incentives, such as reducing agent commission rates on TWIA policies and adding protections from lawsuit abuse and fraud. Several insurers said there is not any specific change that would cause them to write more wind and hail insurance in the seacoast territory.

Results

TDI received survey responses from insurers that represented 92 percent of the Texas residential property insurance market[4] and 55 percent of the Texas commercial property insurance market. Some insurers did not answer all of the questions.

TDI also asked insurers about the TWIA depopulation programs established under SB 900, 84th Legislature. Six residential insurers said they planned to participate. After the survey, TDI approved four insurers to participate in TWIA's assumption reinsurance depopulation program.

The responding insurers ranked the five incentives below as most likely to encourage them to write wind and hail insurance in the Tier 1 coastal counties of Texas. Responses varied when discussing the potential impact of the incentives.

2 TDI studied incentives for the portion of the seacoast territory where TWIA provides coverage (Tier 1). Tier 1 consists of 14 "first tier" coastal counties and certain portions of Harris County.

3 The largest and smallest insurers were determined based on premiums for the four quarters ending June 30, 2015.

4 All market shares were determined based on premiums in 2015.

section three: senate bill 900 summary of market incentives study results

1 | Charging rates the insurer believes are actuarially adequate in Tier 1, and risks being ineligible for TWIA coverage if an insurer offers wind and hail insurance.

- ✯ Thirty-four insurers, representing 44 percent of the residential market and 27 percent of the commercial market, would write more wind and hail insurance in Tier 1. Most indicated their rates would be between 20-70 percent greater than TWIA's rates.
- ✯ Thirty-five insurers, representing 43 percent of the residential market and 21 percent of the commercial market, would not write more wind and hail insurance in Tier 1.
- ✯ Six insurers, representing 5 percent of the residential market and 7 percent of the commercial market, did not respond.
- ✯ Five insurers, representing 21 percent of the residential market and 2 percent of the commercial market, indicated that they would increase their exposure by more than $100 million in Tier 1.

2 | Requiring insurers to write a proportionate share of wind and hail insurance in Tier 1 in order to write property insurance in Texas.

- ✯ Fifty-two insurers, representing 48 percent of the residential market and 29 percent of the commercial market, would write a proportionate share if required.
- ✯ Eleven insurers, representing 3 percent of the residential market and 2 percent of the commercial market, would stop writing property insurance in Texas.
- ✯ Thirteen insurers, representing 42 percent of the residential market and 25 percent of the commercial market, did not respond.
- ✯ Companies that write only in Texas, such as farm mutuals, may be impacted more than others.

3 | Requiring insurers to write a proportionate share of wind and hail insurance in Tier 1 in order to use geographic location as an underwriting guideline.

- ✯ Fifteen insurers, representing 30 percent of the residential market and 4 percent of the commercial market, would write a proportionate share if required.
- ✯ Nine insurers, representing 2 percent of the residential market and 6 percent of the commercial market, would write less.
- ✯ Forty-one insurers, representing 28 percent of the residential market and 27 percent of the commercial market, would not change the amount they write.
- ✯ Ten insurers, representing 32 percent of the residential market and 17 percent of the commercial market, did not respond.

4 | Adopting and enforcing building codes, standards, construction requirements, and retrofit measures.

- ✯ Eleven insurers, representing 25 percent of the residential market and 14 percent of the commercial market, suggested adopting the Institute for Business and Home Safety (IBHS) fortified program.
- ✯ Six insurers, representing 5 percent of the residential market and 1 percent of the commercial market, suggested modeling Florida's building codes.
- ✯ Four insurers, representing 14 percent of the residential market and 2 percent of the commercial market, suggested enforcing the latest International Residential Code.
- ✯ Five insurers, representing 5 percent of the residential market and 2 percent of the commercial market, did not respond.

5 | Requiring insurers to write a proportionate share of wind and hail insurance in Tier 1 in order to write property insurance in certain areas of Texas.

- Thirty-four insurers, representing 37 percent of the residential market and 23 percent of the commercial market, would write a proportionate share if required.
- Twenty-seven insurers, representing 15 percent of the residential market and 6 percent of the commercial market, would stop writing property insurance in those areas.
- Fourteen insurers, representing 40 percent of the residential market and 25 percent of the commercial market, did not respond.

Incentives insurers ranked less likely to encourage them to write wind and hail insurance in Tier 1:

- creating a statutory backstop to reinsure wind and hail losses above a specified amount,
- requiring wind and hail coverage in every Tier 1 property policy,
- applying TWIA's protections in Insurance Code Sections 2210.574 - 2210.577 to the resolution of all wind and hail disputes,
- paying a proportionately higher assessment amount for TWIA's excess losses,
- paying an annual nonrecoupable charge to the Catastrophe Reserve Trust Fund, and
- requiring insurers to write a proportionate share of wind and hail insurance in Tier 1 if they use the suit-filing or claim-filing deadlines under Insurance Code Section 2301.010.

Texas Department of Insurance
Biennial Report to the 85th Legislature
TDIBR | 1216