

May 14, 2018

Mr. Doug Danzeiser, Director *via email: LHLComments@tdi.texas.gov*
Life & Health Lines
Texas Department of Insurance
333 Guadalupe St.
Austin, TX 78701

Re: Informal Rule Proposal; 28 TAC Ch. 5, Subchapter G, Sale of Substitutes to
Workers Compensation Insurance Sec. 5.6302

Dear Mr. Danzeiser:

This letter is submitted on behalf of the Texas Association of Life and Health Insurers (TALHI.) TALHI is a trade association with over 100 insurance companies as members. TALHI has requested that the Department consider amending this rule because the current rules have been broadly applied to certain products that should not be considered as alternatives to workers compensation insurance. These include products such as specified disease, dental only, vision only, and other types of limited benefit policies, as well as major medical and accident-only policies where the policy specifically excludes injuries, accidents, and illness on the job.

The initial draft rules appear to more effectively limit the requirement for notices required under Section 5.6302. The limitation of notices on both the policy form and marketing materials would only apply to policies with benefits for “occupational injuries, disease, or fatalities.” The rules would also apply to products that provide liability coverage or indemnify an employer without workers compensation insurance coverage. A life, accident, and health insurer cannot provide liability coverage.

Some of our members have requested clarification of the application of these rules either through the rules themselves or other means as to the specific types of products that will be required or not required to comply with the amended rule. This could be accomplished with a new subsection on the purpose and applicability of the rule or through designated examples of types of policies that are not subject to this requirement.

The best way to provide certainty in the future would be to define “occupational accident insurance.” Agent groups have currently defined these products as “a policy designed to offer benefits to independent contractors and employees who are not covered under a workers’ compensation insurance policy”.¹ Several other websites identify products that are typically referred to as an “occupational accident insurance” product for non-subscribers. The application

¹ www.trustedchoice.com/business-insurance/workers-compensation/occupational-accident-insurance

May 14, 2018

Page 2

of this rule should focus on those products and limit the application to products marketed to non-subscribers, which was the purpose of the original statute and rule.

Another way to clarify which products these rules apply to would be through a new subsection or statement that the notice is not required for the following types of policies:

- (1) coverage for a specified disease or illness only policy;
- (2) Medicare supplement and Medicare Select benefit plans regulated in accordance with federal law;
- (3) long-term care coverage of benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits or any combination of those coverages of benefits;
- (4) coverage that provides limited scope dental or vision benefits;
- (5) hospital indemnity or other fixed indemnity insurance coverage;
- (6) individual or group life insurance;
- (7) individual or group credit life, accident or disability;
- (8) individual or group prepaid legal insurance;
- (9) individual or group disability income policies; or
- (10) major medical, accident only, or other similar coverages that contain exclusions for coverage for accidents, injuries or sicknesses incurred on the job.

TALHI appreciates the opportunity to provide comments and hopes the Department will adopt changes to Section 5.6302 as soon as possible. Please contact me or Jay Thompson, TALHI's general counsel, if you have questions or need additional input.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Cawley". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

Jennifer Cawley

Cc: Jay Thompson