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Ms. Norma Garcia  
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Texas Department of Insurance  
Office of the Chief Clerk  
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PO Box 149104  
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Re: Proposed Rule Amendments; Subchapter R. Withdrawal Plan Requirements and Procedures, 28 TAC §§7.1801, 7.1802, 7.1804, 7.1809 and 7.1808

Dear Ms. Garcia:

These comments are submitted on behalf of our client, the Texas Association of Life and Health Insurers (TALHI), insurance trade association representing the interests of over 150 life and health insurers who do business in Texas.

Several of the proposed changes would improve these rules and are supported. There are a few areas where either amendments or clarifications are recommended.

The following specific comments in those areas include:

1. Proposed Amendments to 28 TAC §7.1804. When is a Withdrawal Plan Required.

Subsection (a). TEX. INS. CODE § 827.003 requires a withdrawal plan if one of the three actions is proposed by an insurer:

1. Reducing total annual premium volume by 50% or more;
2. Reducing annual premium by 75% or more in a line of insurance in this state; or
3. reducing, in this state, or in a rating territory by 50% or more in personal automobile or residential property.

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Life and health companies cannot write personal automobile or residential property insurance. Thus, the focus on rating territory reporting requirements should not be imposed on life and health insurers.

The criteria in TEX. INS. CODE § 827.003 would be included in the amended definition of the word withdrawal. Accordingly, the words “from a line of insurance” should be eliminated in subsections (a) and a period after the word withdrawal. The words “from a line of insurance” should be eliminated in subsections (a)(1), and (a)(2). This would more properly reflect that a withdrawal plan may be required in situations other than just a “line of insurance”.

Subsection (b). The current rule, 28 TAC §7.1804(b), starts with the word “exception”. The proposed amendment to the rule deletes the word “exception” and requires an insurer to provide “notice” to the department for certain types of situations that are exempt from the withdrawal plan statute requirements under TEX. INS. CODE § 827.002. Why is notice still required when certain types of transactions are exempted from the requirements of Chapter 827 and the statute states that “this chapter does not apply” to this exemption? There is no provision in Chapter 827 that requires such notice or authorizes the department to require notice by rule when the statute does not apply.

2. Proposed Amendments to 28 TAC Sec. 7.1805. Contents of Withdrawal Plan. The proposed amendment to 28 TAC §7.1805(a)(8)(A) would seem to require the filing of total annual premium *by rating territory* and the estimated number of policies, certificates and covered persons in Texas by rating territory on any of the three distinctly different types of actions triggering a withdrawal plan under TEX. INS. CODE §827.003. Information by each rating territory should not be required if a total withdrawal is proposed. Information by each rating territory should also not be required if a withdrawal from a line of business is contemplated. This requirement should be amended to fit the type of withdrawal as outlined in TEX. INS. CODE § 827.003, and should only be required if an insurer is proposing to withdraw from personal auto or residential property in a rating territory.

The proposed rule also requires the filing of additional information that may not be readily available or maintained. For example, the rule is amended to require the number of policies and certificates by rating territory. This information, including information about “covered persons” may not be as readily for all lines of business written by life and health insurers. In the case of life insurance, owners of a policy may have moved since the time of the policy inception.

It is recommended that the requirement to show this detailed information for each rating territory not be included and that the proposed amendments not be adopted. The current rule should continue to require as written where insurers would show the aggregate premium and covered persons in Texas. If the withdrawal is because an insurer is proposing to withdraw from a particular rating territory in personal automobile or residential property, premium and other information for that territory should be all that is required.

3. Estimate of Market Percentage by Rating Territory. The proposed amendment to 28 TAC Sec. 7.1805(a)(8)(B) requires an estimate of percentage of market by each rating territory. Current rules require only an estimate of the impact on the Texas market. As stated above, this requirement would add a new requirement for all types of actions requiring a withdrawal plan. Information about a rating territory should not be required unless an insurer is proposing to withdraw from a particular rating territory in personal automobile or residential property.

Market share data by rating territory is not generally available on lines of business written by life and health insurers. Even though market share is provided by TDI, this is shown on a statewide basis. Companies have objected to release of individual writings by county and zip code on the basis that this is confidential trade secret or financial information that would have negative impact on competitors. Texas courts and the Attorney General have held that this type of data is excepted from disclosure under the Texas Open Records Act under TEX. GOVT. CODE Sec. 552.104 and 552.110.<sup>1</sup> The requirement for companies to estimate market share “in each rating territory” should not be adopted.

It is recommended that this change in this subsection not be adopted. Instead, it is recommended that the rule be revised conform to the different types of withdrawals contemplated by statute.

4. Deletion of provisions requiring filing of Actuarial Opinion on Reserves. TALHI supports the proposed amendment to 28 TAC Sec. 7.1805(b)(12)(c), which deletes the filing of an actuarial opinion on reserve adequacy with a withdrawal plan.

This information is not needed with a withdrawal plan and is already available to the department.

5. When is a plan considered to be filed? Current rules in 28 TAC §7.1806(c) provides that a plan is not considered to be filed until such date as the insurer has provided all information and material necessary to constitute a completed plan of withdrawal.

It is recommended this section be amended to read as follows:

“...a plan is not considered to be filed until such date as the insurer has provided all information and material [~~necessary~~] required under Section 7.1805 to constitute a completed plan of withdrawal.”

There have been instances where TDI requests additional information that is not specifically required in the rule and TDI staff has attempted to avoid the 60 day review requirement on the basis that all necessary information has not been “filed”.

Please contact either Jennifer Cawley, Exec. Director for TALHI or me if you have any questions or need additional input on these comments.

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<sup>1</sup> *Birnbaum v. Alliance of American Insurers, et. al*, 994 S.W.2d 766 (Tex. App.-Austin 1999), pet. Denied.

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Sincerely,

*/s/ Jay A. Thompson*

Jay A. Thompson

Cc: Jeff Hunt, TDI

Doug Slape, Deputy Commissioner, Financial Services Division

Jennifer Cawley, TALHI