

No. **2546**

**Official Order
of the
Texas Commissioner of Insurance**

Date: MAY 24 2013

Subject Considered:

**Application to Establish a Separate Class of Business
For Certain Small Employer Health Coverage
Under Insurance Code §1501.202(e)**

The commissioner of insurance considers requests filed by Blue Cross Blue Shield of Texas (BCBSTX) that small employer group health benefit plan issuers be permitted to create a small employer group class of business exclusively for qualified grandfathered business. BCBSTX proposes that it will, if permitted to create a small employer group class of business, offer eligible small employers with current qualifying grandfathered plans the opportunity to transfer to the new, grandfathered class of business, which will continue to utilize current rating methodology. After considering the requests, the commissioner adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. BCBSTX filed requests on March 25, 2013, and April 23, 2013, to establish a separate class of business for small employer health benefit plans that are grandfathered under federal health care law.
2. Section 1312(c)(4) of the Patient Protection and Affordable Care Act (Pub. L. 111-148) (PPACA) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) prohibits any state law that would require enrollees in grandfathered health plans to be included in an individual, small group, or merged individual- and small-group risk pool for non-grandfathered health plan enrollees.
3. The federal provisions in Finding No. 2 reflect congressional anticipation and recognition of significant differences in coverage and costs between qualified grandfathered and PPACA-compliant non-grandfathered plans.
4. Although Insurance Code Chapter 1501 permits issuers to create up to nine categories or classes of business for rating purposes – each with its own separate rating manual – the implementing small employer group health plan

rules do not have specific provisions that allow for the creation of separate classes of business for qualifying grandfathered plans and non-grandfathered plans.

5. PPACA Section 1201 (amending Section 2701 of the Public Health Services Act and codified as 42 USC §300gg) imposes, beginning in 2014, a broad set of rating rules that restrict what issuers can charge and how rates can vary for non-grandfathered small employer group coverage.
6. If separate classes of business are not created to distinguish small employer health benefit plans that are qualified grandfathered plans under federal health care law, the grandfathered business effectively will be included in a pool with classes of non-grandfathered business for rating purposes, in violation of federal provisions.
7. Because of changes that take effect in 2014, the pricing differential between qualified grandfathered and non-grandfathered plans will be so significant that separate classes of business for qualified grandfathered plans and non-grandfathered plans will be crucial to helping maintain viability of qualified grandfathered plans in the small group health market.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter under Insurance Code §1501.202(e).
2. Insurance Code §1501.202(e) provides that the commissioner may approve the establishment of additional classes of business if the commissioner finds that the establishment of additional classes would enhance the efficiency and fairness of the health coverage market for small employers.
3. The BCBSTX application to establish a separate class of business under §1501.202(e) complies with applicable law.
4. PPACA Section 1312(c)(4) (codified as 42 USC §18032(c)(4)), provides that “[a] health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market [or in the small group market], including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.” It further provides that a state law requiring grandfathered health plans to be included in the pool shall not apply.
5. Enactment of PPACA has created unique circumstances in the small employer group health coverage market that support approval of the BCBSTX application

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to establish a separate class of business under §1501.202(e), because approval will enhance the efficiency and fairness of the health coverage market for small employers. A separate class of business will enhance administrative and other efficiencies and fairness, by:

- a. ensuring that qualifying grandfathered plans will be distinguished from non-grandfathered plans for rating purposes;
- b. continuing the current rating methodology for qualifying grandfathered plans; and
- c. avoiding unintended violations of federal provisions on risk pool composition.

The commissioner of insurance approves the application of BCBSTX to establish a separate class of business for small employer health benefit plans that are grandfathered under federal health care law.


Eleanor Kitzman
Commissioner of Insurance