

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE
PORTABILITY AND AVAILABILITY ACT REGULATIONS
28 TAC §26.30

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §26.30, concerning composite premiums that may be offered by small employer carriers. The new section is necessary to establish a four-tier composite premium method as the allowed composite premium method in the small group market, instead of the federal default method. This will alleviate potential confusion resulting from the federal default method and provide a consistent method for determining composite premiums across the entire group market.

EXPLANATION. The use of composite premiums is a standard practice in the health insurance market that reduces administrative burdens and makes it easier for group members to make enrollment decisions. For the small group market, 45 Code of Federal Regulations (CFR) §147.102(c)(3) requires the use of a two-tier composite premium method based on age (21 and older, and under 21) unless a state establishes and Centers for Medicare and Medicaid Services (CMS) approves an alternative. The federal default method is unconventional and potentially confusing to the many groups accustomed to composite premiums based on four tiers: 1) employee only, 2) employee and spouse, 3) employee and child or children, and 4) employee and family. The four-tier method is common practice in the large group market. By allowing a similar approach in the small group market, Texas would have more consistent composite premium methods across the entire group market and alleviate potential confusion resulting from the two-tier method.

In response to requests from industry, TDI submitted a proposal to offer carriers a choice between the two-tier federal default and the more familiar four-tier alternative on November 6, 2014. CMS responded that only a single composite method may be used—either the federal default or an approved alternative. So, on January 21, 2015, TDI proposed the four-tier alternative method for use by carriers in the small group market in

Texas. TDI's full request letter can be viewed on TDI's website. In its response email, CMS approved the proposal and added reminders that "[i]ssuers in your state need to use this method when they offer the composite premium option to small groups;" "[s]mall group issuers must first rate all the individuals in a group on a per-member basis following the Market Reform Premium Rules (e.g., standard age factors that reflect the 3:1 limit and state specific geographic rating areas);" and "[t]he FF SHOP will not use composite premium methods for the 2015 plan year. The FF SHOP plans to use the federal default composite premium method for the 2016 plan year."

Proposed new §26.30 is necessary to establish the four-tier method as the required method in the small group market instead of the federal default method, to alleviate potential confusion resulting from the federal default method, and to provide a consistent method for determining composite premiums across the entire group market. Proposed new §26.30(a) provides definitions for "composite premium," "per-member premium," "tier," and "tier factor." Proposed new §26.30(b) provides that a small employer carrier may offer composite premiums to small groups in addition to, but not instead of, per-member premiums. Proposed new §26.30(c) requires that small employer carriers choosing to offer composite premiums in the small group market must use the tiers and tier factors described in subsection (d) to determine composite premiums as provided in 45 CFR §147.102(c)(3) and other applicable law. Proposed new §26.30(d) lists the tiers and tier factors: (1) employee only, with a tier factor of 1.0; (2) employee and spouse, with a tier factor of 2.0; (3) employee and child or children, with a tier factor of 2.0; and (4) employee and family, with a tier factor of 3.0. Proposed new §26.30(e) states that the new section applies to health benefit plans issued or renewed on or after November 1, 2015.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jan Graeber, Director and Chief Actuary, Rate and Form Review Office for the Life, Accident, and Health Section, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local

governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Graeber has also determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed sections are the use of a less confusing and more familiar composite premium method in the small group market and a consistent composite premium method across the entire group market.

The proposed section does not create or impose any new costs because small employer carriers are not required to offer composite premiums. Small employer carriers that offer composite premiums are required to comply with existing federal law, which requires the use of a uniform method state wide.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In compliance with Government Code §2006.002(c), TDI has determined that the proposed new section establishing a four-tier method for determining composite premiums will not have an adverse economic effect on small or micro businesses required to comply with the proposed rule. The proposal does not impose on businesses any requirements or costs because offering composite premiums to small employers remains optional. Therefore, TDI has determined that a regulatory flexibility analysis is not required. Flexibility for small or micro businesses that choose to offer composite premiums is not feasible because federal regulations and CMS allow only one method for determining composite premiums in the state. Further, permitting small or micro businesses to continue to use the federal default method or a different method would not fulfill the purposes of the rule in providing a less confusing and more familiar composite premium method and a consistent composite premium method across the entire group market.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal or request a hearing you must do so in writing no later than 5 p.m. Central time on September 8, 2015. Send your written comments or hearing request by email to chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A hearing request must be on a separate page from any written comments. You must simultaneously submit an additional copy of the comments or hearing request either by email to lhcomments@tdi.texas.gov, or by mail to Jan Graeber, Director and Chief Actuary, Rate and Form Review Office, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, TDI will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the new section under Insurance Code §§1501.010, 1501.211, and 36.001. Section 1501.010 authorizes the commissioner to adopt rules necessary to implement Chapter 1501 (the Health Insurance Portability and Availability Act) and meet the minimum requirements of federal law, including regulations. Section 1501.211 provides that rules adopted under §1501.010 may ensure that rating practices used by small employer health benefit plan issuers are consistent with the purposes of the chapter and that differences in premium rates charged for each small employer health benefit plan are reasonable and reflect objective differences in plan design. Section 36.001 provides the commissioner's general rulemaking authority to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. The proposal affects Insurance Code Chapter 1501.

TEXT.

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§26.30. Composite Premiums.

(a) Definitions. For purposes of this section:

(1) "Composite premiums" are premiums offered to enrollees of a small group health plan that are determined using the average premium per enrollee and corresponding average premiums for different coverage tiers, as described in this section.

(2) "Per-member premiums" are premiums offered to enrollees that are determined on an individual basis.

(3) "Tier" refers to each premium category in subsection (d).

(4) "Tier factor" is a multiplier used to determine premium for each tier.

(b) A small employer carrier may offer composite premiums in addition to per-member premiums. Composite premiums cannot be offered instead of per-member premiums.

(c) A small employer carrier that offers composite premiums in the small group market in Texas must determine composite premiums using the tiers and tier factors described in this section, as provided in 45 CFR §147.102(c)(3) and other applicable law.

(d) The tiers and tier factors used to determine composite premiums are:

(1) employee only, with a tier factor of 1.0;

(2) employee and spouse, with a tier factor of 2.0;

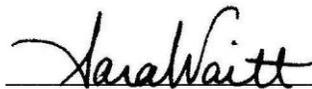
(3) employee and child or children, with a tier factor of 2.0; and

(4) employee and family, with a tier factor of 3.0.

(e) This section applies to health benefit plans issued or renewed on or after November 1, 2015.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on July 15, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance