

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance
Oversight
200 Independence Avenue SW
Washington, DC 20201



March 4, 2022

Insurance Commissioner Cassie Brown
Texas Department of Insurance
PO Box 12030
Austin, TX 78711-2030

Dear Commissioner Brown:

Thank you and your staff for your collaboration in ensuring Texas' smooth transition to effective rate review status. This letter designates Texas as a state with an Effective Rate Review Program pursuant to 45 CFR 154.301 beginning with rate filings submitted for the 2023 plan year. The change in responsibilities detailed in this letter are based on this designation. In general, the Texas Department of Insurance, (DOI) will perform the function of reviewing rate filings for health insurance issuer compliance with the Affordable Care Act (ACA) insurance market rating reforms¹ beginning with 2023 plan year filings.

This letter serves to delineate the responsibilities of the DOI and the Centers for Medicare & Medicaid Services (CMS) regarding review of health insurance issuer rate filings for compliance with the ACA insurance market rating reforms.²

CMS acknowledges that Texas state law and regulations sufficiently mirror federal rate review requirements in section 2794 of the Public Health Service Act (PHS Act) and the implementing regulations in 45 CFR Part 154. To the extent that changes are made with respect to statutory language or accompanying state-level rate filing requirements and review framework such that Texas is not able to maintain its status as a state with an Effective Rate Review Program, CMS

¹ The DOI intends to use the Compliance Review Transmittal Form 2021 received from CMS as a guide to its rate review process, as well as ensuring the MLR and Actuarial Value and Cost Share Factor components comply with single risk pool requirements.

² This letter does not address or change the enforcement roles already established with respect to other ACA insurance market reforms or the pre-ACA federal insurance market reforms captured in title XXVII of the Public Health Service Act (PHS Act), as added by the Health Insurance Portability and Accountability Act of 1996 and amended by the Mental Health Parity Act of 1996, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, the Newborns' and Mothers' Health Protection Act (NMHPA), the Women's Health and Cancer Rights Act (WHCRA), the Genetic Information Nondiscrimination Act of 2008 (GINA), Michelle's Law, and the Children's Health Insurance Program Reauthorization Act of 2009. It also does not address the enforcement roles with respect to other federal market reforms added to title XXVII of the PHS Act after enactment of the ACA, as those coordination activities are being separately addressed.

will take over primary enforcement authority.

I. Review of Rate Filings for Compliance with ACA Insurance Market Rating Reforms

The DOI shall review rate filings submitted by health insurance issuers in Texas for all new and existing health benefit plans in the individual and small group markets, that have an effective date on or after January 1, 2023, pursuant to the Texas Insurance Code (TIC), Title 8, Subtitle N, Chapter 1698 and related regulations rules in Texas Administrative Code (TAC), Title 28, Part 1, Chapter 3, Subchapter F, 28 TAC §§ 3.501 – 3.506. This will include reviews to ensure compliance with applicable state requirements, as well as applicable ACA insurance market rating reforms.

In the event the DOI discovers that a health insurance issuer's rate filing is not in compliance with the ACA insurance market rating reforms, the DOI will provide guidance and request that the health insurance issuer amend the rate(s) and supporting analysis contained within the respective rate filing to be consistent with the ACA insurance market rating reforms. If the DOI finds a potential violation and is unable to obtain compliance by the health insurance issuer, the DOI will refer the matter to CMS for possible enforcement action.

Should the DOI issue a determination of "Unreasonable" for a rate filing, the DOI will inform CMS, including a brief explanation of how its analysis of the relevant factors set forth in 45 CFR 154.301(a)(4) caused it to arrive at that determination, within five business days following the DOI's final determination, consistent with 45 CFR 154.210(b)(2). Unreasonable rate filing determinations for products and plans to be offered on the Federally-facilitated Exchange may impact their Qualified Health Plan certification status.

II. Commitment to Keep the DOI and CMS Informed of Enforcement Activities

Each party (CMS and the DOI) will keep the other party informed of all significant developments with respect to any enforcement actions regarding health insurance issuer rate filings and compliance with the ACA insurance market rating reforms with respect to conduct affecting residents of Texas.

III. Exchange of Information and Maintenance of Confidentiality

To facilitate the DOI's review of rate filings for compliance with the ACA insurance market rating reforms, the DOI may gain access to confidential information from CMS's Health Insurance Oversight System (HIOS). The DOI must treat this information as confidential and exempt from disclosure under Texas Government Code, Title 5, Subtitle A, Chapter 552, concerning Public Information, which applies to information held by the DOI, including rate filings. Without an assurance of confidentiality by the DOI, the DOI will be unable to access confidential information contained within HIOS.

Certain documents, data, templates, and other forms of information contained within HIOS have been deemed confidential by CMS or by the sources of the information within HIOS. This includes, but is not limited to, data or other information relative to qualified health plans that the

DOI may receive from CMS or may access via HIOS. The DOI agrees to use such data or information only for purposes of DOI regulatory and oversight in Texas consistent with HIOS Rules of Behavior, and that any data deemed confidential or privileged by CMS shall not be publicly disclosed, nor disseminated beyond the individuals authorized by the DOI, and shall not constitute a waiver of any privilege or claim of confidentiality.

If the DOI enters into relationships with third parties to assist with duties specified in this letter, it must execute contracts that require such entities and any subcontractors or affiliates of such entities to comply with the confidentiality and limitations on disclosure requirements described herein in addition to other applicable privacy and security requirements.

Should the DOI discover any confidential information subject to this agreement is lost, stolen, disclosed or accessed in a manner inconsistent with this agreement, the DOI affirms that it will report the incident or breach by email to both the CMS IT Service Desk (cms_it_service_desk@cms.hhs.gov) and the CMS Oversight Group (ratereview@cms.hhs.gov) within one hour of discovery, and cooperate fully in the federal security incident response.

IV. Terms and Duration

Modification of the responsibilities outlined in this letter may be made as necessary to ensure that consumers in Texas are receiving the full protections established under federal law. The above terms, as presently written or as modified in the future, will apply for as long as Texas maintains its status as a state with an Effective Rate Review Program.

Sincerely,

Samara Lorenz
Director, Oversight Group
Center for Consumer Information & Insurance Oversight