



2018 Biennial Report



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Section 1: Introduction

Governance

The Commissioner of Insurance is the chief executive of the Texas Department of Insurance (TDI). Kent Sullivan was appointed to the position by Governor Greg Abbott in September 2017.

Mission

TDI's mission is to protect insurance consumers by regulating the insurance industry fairly and diligently, promoting a stable and competitive market, and providing information that makes a difference. TDI's innovative, fair, and flexible regulatory approach has benefited both consumers and industry by providing competitive rates and more product options.

With more than \$160 billion of premiums written in 2017, Texas is the second largest insurance market in the nation and the eighth largest in the world. The agency regulates approximately 2,800 companies, more than 500,000 insurance agents, and 130,000 adjusters. The size and growth of the Texas market can be primarily attributed to the robust Texas economy, the resulting population growth, and job creation.

TDI continues to focus on the following priority initiatives:

- Protect consumers.
- Foster competition.
- Mitigate the consequences of federal preemption affecting the Texas health insurance market.
- Work with the Texas Windstorm Insurance Association (TWIA) using lessons learned in the wake of Hurricane Harvey to improve claims processing and the consumer experience.
- Use strategic planning and risk management to fulfill core functions, measure performance, and continuously improve the agency's ability to protect consumers.
- Investigate and prosecute insurance fraud.

Internal reforms

Commissioner Sullivan, who was appointed as the agency's fifth commissioner in seven years, has initiated a top to bottom review of agency processes with an eye toward improvement at every level. Each review uses three basic principles:

- Review and implement best practices.
- Modernize technology and processes.
- Focus on clear communication.

This effort has led to customer service improvements, better use of technology, and organizational and process efficiency.

Customer service improvements

- **Call center:** After Harvey, insurance agents and adjusters faced hour-long hold times when they called. By December 2018, the average wait was less than two minutes.
- **New website:** An updated website makes information easier to find and understand and works better on cell phones and tablets.
- **Plain language:** Forms and letters have been revised to simplify the language.
- **Catastrophe data call:** Worked with the industry to simplify the template for the data call used after a catastrophe so that data can be collected and analyzed faster in the future.
- **Health cost transparency:** TDI launched texashealthcarecosts.org where Texans can find the cost of common surgeries, tests, and other procedures by ZIP code.

Organizational improvements

- **Customer service focus:** Call center and processing operations for agent licensing and consumer complaints have been combined into one seamless customer service section. TDI also implemented new technology and updated processes to improve the customer experience.
- **Management structure:** Commissioner Sullivan appointed a clear second-in-command, Doug Slape. This change in structure provides more oversight and consistency of division operations and decision making.

- **Complaint trends:** The agency created a unit to better monitor complaint trends to proactively identify issues and resolve them earlier.
- **Arson lab transfer:** Management of the State Fire Marshal's Office's arson lab was transferred to the Texas Department of Public Safety (DPS) through an inter-agency agreement. The arson lab is now supported by the DPS network of labs in 13 locations.

Technology and process improvements

- **Online services:** More licensing applications and transactions are now available online, and soon all applications will be online. The agency can process an online application faster and for about half the cost of a paper application.
- **Rule process:** The rulemaking process has been improved to better keep up with changing statutes and reduce the backlog of rule projects.
- **New open records system:** An automated system provides better tracking for the agency and requestors, and the agency can now accept payments online.
- **Filing requirements:** New combined rate and rule filings eliminate the need for companies to provide duplicate information and achieves a more coordinated review process.

Section 2: Recommendations to the Texas Legislature

Require flood coverage disclosures

Recommendation

Amend the Insurance Code to require property policies to include a prominent disclosure if the policy does not cover flood damage. This can be done by either requiring TDI to adopt rules for such a disclosure or by providing specific language in statute for the disclosure.

Issue

Property within the FEMA 100-year flood plain must have flood insurance to get a federally backed mortgage. More than half of homes flooded by Hurricane Harvey were outside of designated flood zones, and most of those didn't have flood insurance. News accounts after Harvey noted that some homeowners outside of flood zones and even renters in flood zones were not aware that they might need flood insurance. Providing consumers with clear information about flood insurance can help Texas families make more informed decisions and better protect themselves from financial risks associated with catastrophic flooding.

Background

Texas is particularly prone to floods, and almost every major city in Texas has areas at high risk of flooding. Flood maps, which are developed by FEMA, are difficult to keep up to date because development can change an area's flood risk.

At least six states (Florida, Louisiana, Minnesota, New Hampshire, New York, and Washington) have adopted laws requiring that property insurance policies include a disclosure that the policy does not cover flood damage. Texas could benefit from a similar requirement. If directed by the Legislature, TDI would work with the industry and consumer groups to develop and test a notice written in plain language.

Increase consumer protection with flexible TWIA deadline extensions

Recommendation

Amend Texas Insurance Code 2210.581 to help ensure that both consumers and the Texas Windstorm Insurance Association (TWIA) have sufficient time to settle claims and resolve disputes:

- Create separate deadline extension limits for TWIA and consumers or remove the limitation on extensions that can be given to consumers.
- Apply the limits to each event rather than limiting them to a calendar year.

Issue

State law allows the Commissioner of Insurance to extend certain deadlines for TWIA and TWIA consumers for good cause; however, the combined total of all extensions cannot exceed 120 days. For example, if the Commissioner gives TWIA 30 additional days to accept or deny claims after a catastrophe, the consumer deadline to demand appraisal can only be extended by 90 days.

In addition, the total of all extensions cannot exceed 120 days in a calendar year.

Background

Insurance Code Chapter 2210, Subchapter L-1 governs TWIA claims settlement and dispute resolution. The subchapter includes deadlines that apply to TWIA actions and others that apply to consumer actions. The Commissioner can extend any deadline for good cause under Section 2210.581, but the extension can't exceed 120 total days for claims filed during a calendar year. In 2008, Texas experienced two hurricanes – Ike and Dolly – that caused extensive damage. The statute's current language could mean that deadlines would be extended after the first storm of the year but not the second.

Move TexasSure oversight to a more appropriate agency

Recommendation

Amend Transportation Code Chapter 601, Subchapter N, to designate the Texas Department of Motor Vehicles (TxDMV) or the Texas Department of Public Safety (DPS) as the lead agency for the financial responsibility verification program, known as TexasSure. Both TxDMV and DPS provide data to TexasSure system, are end-users of the system, and are required by the Transportation Code to verify financial responsibility.

Issue

TDI has primary responsibility for contract administration and program operations for TexasSure, the financial responsibility verification system used to verify if Texas motorists have insurance. However, TDI is not a user of the TexasSure system nor does it provide data for the system. However, TDI devotes significant staff time and resources to program operations and maintenance to ensure the system meets DPS and TxDMV requirements and adjusts to their system changes.

Background

The 79th Texas Legislature passed Senate Bill 1670 to help reduce the number of uninsured motorists in Texas. This bill created the financial responsibility verification program (Subchapter N of Transportation Code Chapter 601). The statute required TDI to work with TxDMV, DPS, and the Department of Information Resources to create the program to verify if Texas motorists have insurance. The program was branded TexasSure. By statute, the implementing agencies must jointly select a vendor through a competitive bidding process and jointly enter into a contract with the selected vendor.

On a weekly basis, the TexasSure vendor receives personal auto insurance policy data from insurance companies, vehicle registration data from TxDMV, and self-insurance data from DPS. The vendor uses the data to match registered vehicles and titles to insured vehicles.

TexasSure is available to DPS and all Texas law enforcement agencies to verify that a driver complies with the state's financial responsibility laws.

Transfer amusement ride regulation

Recommendation

Amend Occupations Code Chapter 2151 to transfer amusement ride regulation to a more appropriate agency, such as the Texas Department of Licensing and Regulation. To strengthen regulation, provide the regulatory agency with appropriate authority to enforce compliance with the law.

Issue

State law requires TDI to administer the Amusement Ride Safety Inspection and Insurance Act. However, TDI has no inspection or enforcement authority over amusement rides. The Office of the Attorney General and local law enforcement have the authority to enforce compliance with the act.

Background

To operate an amusement ride in Texas, the Amusement Ride Safety Inspection and Insurance Act (Texas Occupations Code, Chapter 2151) requires the owner or operator to provide TDI with:

- A general liability insurance policy with the minimum statutory limits for bodily injury liability and property damage liability.
- An annual safety inspection of the ride performed by the insurer's authorized representative.
- A filing fee of \$40 per ride or device.

The act covers a broad spectrum of rides, including:

- Mobile carnival rides.
- Theme park rides and devices.
- Continuous airflow inflatable devices, such as bounce houses, jumping pillows, moonwalks, and slides.
- Other rides such as concession go karts, water slides, bungee jumps, mechanical bulls, trackless trains, simulators, bumper boats, and zip lines.

TDI does not have authority to inspect the rides.

TDI has seen a 570 percent increase in the number of amusement ride applications since 2004, largely due to public-use amusement ride rentals. When the agency identifies a noncompliant ride, it contacts the operator. If the operator doesn't come into compliance, TDI notifies the Texas Attorney General's Office and local law enforcement. Law enforcement may charge owners or operators with a Class B misdemeanor for operating a noncompliant amusement ride.

Remove obsolete relativities requirements

Recommendation

Amend Insurance Code Chapter 2053 and Labor Code 407A.351 to delete references to classification relativities.

Issue

Texas is the only state that includes classification relativities as a possible basis for workers' compensation rates. Updating the relativities is a time-consuming process, and they are used to set rates for only 3 percent of the market. Eliminating classification relativities as a rate basis will make more efficient use of state resources with minimal impact on the market.

Background

"Classification relativities" are designed to establish the relative risk of job classifications in terms of workers' compensation costs. This information can then be used by workers' compensation insurers to help set rates for an insured business.

However, loss costs are a better measure of the portion of an insurance rate needed to cover claims and the cost of adjusting claims. Almost 97 percent of workers' compensation premiums are based on loss costs filed by the National Council on Compensation Insurance (NCCI). NCCI is an advisory organization specializing in workers' compensation rating and data collection used by most states. NCCI files updated loss costs annually, which are subject to TDI's review.

A workers' compensation insurer must choose one of three rate bases:

- Relativities established by TDI.
- The insurer's own independent company-specific relativities. (None are on file.)
- NCCI loss costs.

Texas is the only state that includes classification relativities as an alternative rate basis, and statute requires TDI to revise the classification system at least once every five years. However, more frequent updates are needed to keep the relativities in line with the NCCI loss costs.

Section 3: Other considerations

The next section of this report outlines a number of issues that have the potential to affect Texas consumers or the Texas insurance market and which may be of interest to the Texas policymakers.

TDI is providing a brief synopsis of these issues, including relevant actions taken by other states, as informational items for Texas policymakers. TDI is providing no recommendations on these issues but remains a resource to policymakers interested in any of the issues.

Hurricane Harvey: Lessons learned

Hurricane Harvey made landfall on the Texas coast on August 25, 2017. This catastrophe proved to be one of the costliest storms in Texas' history, and essentially represented two distinct perils: wind damage along Texas' middle coast and significant flooding throughout South East Texas.

After Hurricane Harvey, TDI extended call center hours, sent consumer protection specialists to the coast, and sent fraud investigators to deter fly-by-night contractors and scam artists. The agency also identified areas where changes could improve future catastrophe response. In the past year, TDI has:

- Added contingent resources in agent and adjuster licensing to allow the agency to scale up quickly to process a sudden spike in applications.
- Worked with the industry to simplify the template for the catastrophe data call.
- Added better data analysis tools to report the results of future data calls faster.

The agency also identified issues that may be of interest to the Legislature, including a lack of oversight of some contractors and Texas Windstorm Insurance Association (TWIA) claims handling.

Contractor licensing / registration

TDI has heard concerns about roofing and contractor scams from consumers, agents, the media, and other stakeholders. Texas does not regulate or license roofers or contractors. In the past, the legislature has considered voluntary registration, mandatory registration, or licensure of contractors.

Complaints about contractors, particularly out-of-state contractors and roofers who arrive after a storm, include:

- Offering to waive deductibles, which could cause the policyholder to commit insurance fraud.
- Requiring a large upfront payment and never returning.
- Taking on so many contracts that repairs are pushed months into the future while families are out of their homes.
- Failing to honor warranties or correct shoddy repairs.

Texas Windstorm Insurance Association (TWIA)

Several concerns were identified as TDI worked with TWIA consumers and audited TWIA's claims processing:

- **Re-inspections:** When TWIA policyholders raise a dispute over the amount of a covered loss, TWIA typically first offers them the option of a re-inspection. This may save the policyholder the cost of appraisal, which is split between the policyholder and TWIA. However, policyholders must still request appraisal by certain deadlines to preserve their right to contest TWIA's decision. If TWIA offers re-inspections, consumers must be provided clear information as to how accepting that option is not a substitute for requesting appraisal.
- **Lack of claims manual:** TDI's audit identified that while TWIA has policies and checklists for handling claims, it does not have a comprehensive claims procedure manual. This may lead to inconsistencies in claims handling.
- **Notice of disposition:** TWIA's notice of disposition, which tells consumers the status of a claim, mirrors the language in statute but can be confusing for consumers. The notice indicates the claim was "accepted in full," "accepted in part," or "denied in full." However, "accepted in full" could lead a consumer to believe that TWIA will not dispute what was damaged and will pay the full cost to repair that damage. TWIA and the consumer might have different understandings about what damage was claimed. The amount TWIA offered to pay for the damage also might be less than what the consumer believes fair.

Windstorm building codes

To get windstorm coverage through TWIA, a home's construction must comply with the International Residential Code (IRC) and International Building Code (IBC) adopted by TDI.

The last windstorm building codes the agency adopted are the 2006 IRC and IBC. Most construction, alteration, remodeling or repair beginning on or after January 1, 2008, must comply with these 2006 codes. The 2006 codes do not reflect innovations in safety and technology that have developed in the 11 years since their adoption. Differences between TDI-adopted codes and newer city-adopted codes create a strain on builders and consumers.

TDI is considering adopting the 2018 IRC and IBC codes by rule in 2019.

Private flood insurance

Most flood insurance is sold through the National Flood Insurance Program (NFIP). As of August 31, 2018, Texas had about 748,000 NFIP policies in force, representing about \$433 million of written premium.

Information available about the size of the private flood insurance market in Texas includes:

- Private insurers offering stand-alone flood policies reported almost \$43 million in direct written premium for 2017, an increase of 61 percent from 2016. This includes both personal and commercial flood premium.
- Some companies have also filed endorsements to write flood coverage as part of a homeowners policy. Companies include premiums from flood endorsements with their homeowners premiums, so specific data on how much flood is written through a homeowners policy is not available.
- The Surplus Lines Stamping Office of Texas reported about 19,000 surplus lines flood policies in force as of September 30, 2018.

Some states have taken legislative action to try to increase the availability of private flood insurance policies. Examples of those efforts include:

- In most states, a consumer must first seek a flood insurance policy in the admitted market and then be denied before buying a policy in the surplus lines market. At least 13 states have waived this diligent effort requirement: Alaska, Arizona, Connecticut, Florida, Idaho, Louisiana, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin. However, surplus line coverage may not meet lender requirements when flood insurance is required.
- In 2014 Florida passed Senate Bill 542 which relaxed form and rate filing regulations. The Florida law also exempts private flood insurance rates from review at the time of filing, but companies must keep supporting actuarial data for two years. Private flood insurers can customize policies and can request the state to certify that a policy provides flood coverage which equals or exceeds that offered by NFIP.

Non-standard auto insurance

Texas law requires motorists to establish financial responsibility – the ability to pay for damages when the motorist is at fault.

In 2003, the Texas Legislature passed form freedom, which allowed insurers to file their own policy forms for approval. Although the law set minimum dollar limits for liability policies, it did not set minimum standards for policy forms or coverage.

Since 2003, insurers have been filing policy forms with less coverage and more exclusions than the standard Texas personal auto policy. For example, some policies would not provide coverage if:

- The person driving is not listed on the policy (named-driver policies).
- A person is driving a vehicle while breaking the law, such as while intoxicated, texting, or on the phone.
- A personal vehicle holds work tools or supplies.
- A car is kept out of state for more than 30 days.

As insurers use form freedom to develop new coverage options and reduce costs, it's possible that some policies may no longer meet the original intent of Texas' financial responsibility statutes. Further, the increase in the variety of policy terms and policy conditions complicates the agency's ability to promote regulatory and market consistency for the industry and Texas consumers.

Overview of the health market

TDI regulates fully insured health insurance plans, which cover 16 percent of Texas consumers. The agency does not have regulatory authority over federal plans; state plans; city or county plans; or self-funded plans, which make up the majority of large employer plans.

While the group market remains relatively stable, the individual market continues to experience issues with access and affordability. Eight carriers will offer individual major medical plans on the federal exchange in Texas in 2019, down from 19 in 2016. In addition, average premiums for most carriers selling individual Affordable Care Act (ACA) plans increased 70 percent to 200 percent from 2014 to 2019.

Enrollment in ACA plans is declining as costs increase. At the end of 2014, the year in which ACA plans became available, approximately 1.3 million Texans were covered by individual comprehensive health plans. That number decreased to 1.1 million as of the end of 2017. About 80 percent of individuals who purchase ACA coverage are eligible for federal tax subsidies.

In addition, there continue to be legal challenges to the ACA's constitutionality. Consequently, the state must continue to closely monitor the individual market and maintain the flexibility to respond as necessary to potential court decisions.

Association health plans

Association health plans are created when businesses group together to provide their employees' health insurance, either on a fully insured or a self-funded basis. The goal is to lower premiums using economies of scale and by designing plans with exemptions from some federal small-employer requirements.

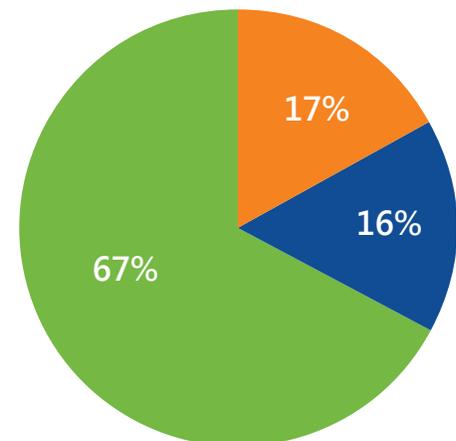
These plans have been permitted under Texas law for many years under different types of formats. They have been somewhat limited since 2010 by the ACA, which applied federal requirements to small employers, even within association plans.

Under recent federal rules, however, small employers within certain association plans will be exempt from some ACA requirements, including federally required essential health benefits, community rating, and a single risk pool. The new rules also allow self-employed "working owners," including sole proprietors, to enroll in association health plans.

TDI's regulatory reach

TDI regulates fully insured health insurance plans.

- Uninsured
- Fully insured coverage regulated by TDI
- Self-insured or government coverage



Because the states may impose requirements that don't conflict with the federal rules, TDI believes all Texas requirements remain valid and effective:

- Texas Insurance Code, Chapter 1501 allows employers to create fully insured associations through cooperatives and coalitions.
- Chapter 1251 offers other structures for fully insured associations.
- Chapter 846 permits employers to create self-funded multiple employer welfare arrangements (MEWAs).
- The Labor Code allows employers to provide self-funded group benefits through a professional employer organization, regulated under Title 28, Chapter 13 of the Texas Administrative Code.

Texas has about 100 employers in cooperatives and coalitions, fewer than 10 self-funded MEWAs, and no self-funded professional employer organizations. Three new coops have filed for registration, and one new MEWA has applied for a certificate since the federal rule was released.

Short-term, limited-duration health plans

Short-term, limited-duration health plans last 12 months or less and typically have more limited benefits than a major medical policy. These plans have more flexibility than ACA plans to help tailor coverages to meet specific consumer health and financial needs. Premiums are lower than with traditional plans, and buyers don't need to wait for open enrollment.

Potential consumers are those who may need coverage for a short period of time, such as recent college graduates or people between jobs.

Federal rules that took effect January 1, 2017, prohibited these plans from lasting longer than three months. However, a new federal rule effective October 2, 2018:

- Reverses the 2017 federal rules by allowing these plans to last up to 12 months. This means a Texas rule in place since 1997 is no longer preempted and will now govern.
- Permits renewals and extensions up to 36 months.
- Requires language to help consumers understand the coverage they are buying. States may also impose additional requirements for the consumer notice.
- Permits the sale of side agreements guaranteeing issuance of additional short-term plans.

Texas has long permitted these plans under rules that limit them to lasting less than a year, including extensions. While these plans are not required to comply with federal essential health benefit requirements, most Texas mandates apply to them. For example, the plans don't have to cover prescription drugs because there is no state mandated drug coverage, but the Texas diabetes coverage mandate would apply.

About 10 carriers have made filings related to short-term plans since the federal rules were released, and TDI expects them to grow in popularity.

1332 waivers

Section 1332 of the ACA encourages innovation by allowing states to request waivers from certain provisions of the ACA, subject to constraints. For example, ACA plans must continue to be offered on a guaranteed issue basis without rating for preexisting conditions. The waivers also cannot impose annual or lifetime coverage limits and must preserve coverage for dependents up to age 26.

In addition, any waiver must satisfy guardrails defined by the federal Centers for Medicare & Medicaid Services (CMS), such as:

- A comparable number of state residents or more must be covered under the waiver as without the waiver.
- Coverage must be at least as affordable and comprehensive as without the waiver.
- The waiver must not increase the federal deficit.

New federal guidance provides more flexibility in demonstrating state authority to apply for a waiver. The authority will depend upon the specific provisions being sought by the waiver. SB 2087, passed during the 85th Legislative Session, provides the state with the authority to pursue a waiver. However, the authority in SB 2087 is set to expire at the end of the state fiscal year, August 31, 2019.

To ensure that Texas retains the ability to apply for and receive waivers, the Legislature may want to consider providing authority beyond that date.

Balance billing

Balance billing occurs when a consumer gets a bill from an out-of-network provider for the difference between the amount charged and the amount paid by the health plan. This is on top of the consumer's normal cost-sharing amounts.

In some cases, consumers didn't know the provider was out-of-network. For example, a consumer may go to an in-network emergency room but receive care from a doctor not in network. Another common scenario is when a consumer has a surgery at an in-network facility but gets a bill from an out-of-network anesthesiologist or radiologist.

In general, health maintenance organization (HMO) plans and exclusive provider organization (EPO) plans usually do not cover out-of-network care.

At least 21 states, including Texas, have state laws to help protect consumers from balance billing. The most common approaches include:

- **Dispute resolution:** Mediation or arbitration allows providers and insurers to negotiate a payment for the claim. Texas currently uses mediation.
- **Prohibition on balance billing:** Out-of-network providers cannot bill consumers more than the allowed cost-sharing amounts.
- **Payment standards:** Payments for out-of-network providers are paid according to a set guideline, such as a rate indexed to the Medicare rate.

Mediation

Mediation, found in Chapter 1467 of the Insurance Code, creates a process to resolve certain payment disputes that result in balance billing. Currently, mediation is limited to consumers with coverage through a preferred provider organization (PPO), the Employee Retirement System, and the Teacher Retirement System for bills from an out-of-network provider in an in-network facility or for emergency services. Mediation does not apply to HMOs.

If a consumer requests mediation, both the insurer and provider must participate. TDI receives the mediation request, and the State Office of Administrative Hearings handles the mediation sessions. Since the law became effective in 2009, TDI has seen an increase over time as more consumers and providers become aware of the program and as the scope of the statute has expanded. Most mediation requests are settled during an informal telephone conference and do not go to formal mediation.

Mediation requests as of October 31, 2018

Mediation requests	FY 2015	FY 2016	FY 2017	FY 2018
Requests received	977	1,504	2,063	4,397
Billed amount	\$ 242,234.35	\$ 4,228,521.02	\$ 7,293,517.53	\$ 9,179,998.93
Amount paid after teleconference	\$ 49,324.50	\$ 713,952.43	\$ 1,133,210.40	\$ 1,054,312.77
Requests settled by teleconference	879	1,396	1,938	1,823
Number pending teleconference outcome	-	-	-	2,306
Referred to SOAH	98	108	125	268
\$1,000 and over	-	1,150	1,501	2,444
\$500-\$999*	-	268	319	642
\$499 amount or less**	-	27	17	32
Did not qualify**	-	59	226	1,279
Total requests received	-	1,504	2,063	4,397

* The mediation request threshold changed to \$500 on September 1, 2015.

** These mediation requests did not qualify because 1) they involved a self-funded or other type of health plan not eligible for this program; 2) the amount was less than the \$500 threshold for mediation; or 3) the requester did not provide enough information.

Third-party complaints

TDI has experienced an increase in complaints from private third-party collection agencies and billing services, including many claims involving health insurance plans not regulated by the agency. This uses a significant amount of the agency's complaint resources and has created delays in processing complaints from consumers.

In Fiscal Year 2018, TDI resolved 19,348 complaints. Half involved a health insurance claim, and 34 percent of those health complaints came from third-party billing services.

TDI regulates only fully insured individual and group health plans, which cover about 16 percent of Texans. In some cases, third-party billers send batches of complaints to the agency that include claims involving plans not regulated by TDI.

The agency is informally addressing this issue with several process changes to prioritize complaints from consumers, to more efficiently handle third-party complaints through batch processing, and to reduce the submission of complaints involving plans not regulated by TDI.

Federal and international preemption

TDI continues to monitor federal efforts that threaten to preempt the state's authority to regulate insurance. These include the Affordable Care Act and the creation of the Federal Insurance Office as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Dodd-Frank Act empowered the Federal Reserve to regulate the holding companies of certain insurers, including a number of Texas companies. For example, the Federal Reserve has proposed capital and other regulatory requirements that would apply to the holding companies of certain Texas insurers and may create conflicts with Texas' statutory authority.

In addition, the U.S. Treasury Department signed a covered agreement with the European Union (E.U.) in September 2017. The agreement addresses three areas of insurance regulation: (1) group supervision; (2) reinsurance; and (3) exchange of information between supervisory authorities. The covered agreement requires all states, including Texas, to eliminate collateral requirements for E.U. reinsurers or risk federal preemption; and, requires states to implement a group supervision and group capital regulatory framework for U.S. insurers operating in the E.U. or face imposition of E.U. group supervision and group capital requirements on the worldwide operations of U.S. insurers.

Texas statutes comply with some, but not all, of the requirements of the covered agreement. This means Texas statutes, particularly statutes governing reinsurance, will need to be amended to comply, perhaps during the 2021 legislative session. The U.S. Treasury Department has not yet issued guidance to states on language that will be compliant with the covered agreement; therefore, TDI is offering no recommendations to the Legislature at this point.

U.S. Treasury recently announced its intent to enter into a separate covered agreement with United Kingdom upon its exit from the E.U.

International developments may erode Texas' authority. The Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, has provided direction to the International Association of Insurance Supervisors (IAIS) to develop global insurance regulation standards, which can form the basis for subsequent federal preemption of state laws.

Given the size of the Texas insurance market, international issues and activities of major national organizations can impact Texas insurers. Therefore, TDI closely monitors activities of the National Association of Insurance Commissioners, the International Association of Insurance Supervisors, and the National Coalition of Insurance Legislators.

Survey of windstorm market incentives

The Texas Insurance Code requires TDI to survey property insurers about incentives for writing windstorm and hail insurance in Tier 1, which is comprised of 14 coastal counties and parts of Harris County. The survey results indicate some incentives could result in a modest increase in the availability of policies on the private market, but no incentive was identified that appears likely to promote significant growth in the voluntary market.

To meet the requirements of Texas Insurance Code Section 2210.015, TDI surveyed:

- The 30 largest residential property insurers based on 2017 premiums.
- Six of the smallest residential property insurers with at least \$1 million in premium.
- Three other insurers that signed up for the voluntary depopulation program.
- The 39 largest commercial lines insurers.

TDI received survey responses from insurers that represented 94 percent of the Texas residential property insurance market and 92 percent of the Texas commercial property insurance market. Some insurers did not answer all the questions applicable to them.

Survey results

TDI asked insurers to name incentives, other than higher TWIA rates, that would increase the amount of windstorm and hail insurance they write. The survey also listed possible requirements for mandatory writing of windstorm and hail insurance, asking insurers if any of these requirements would cause them to stop or reduce writing.

Some insurers responded that mandatory writing could be effective; however, others reported that such requirement could cause them to stop writing coverage in Tier 1.

Voluntary incentives

The incentives most frequently named by insurers that would cause them to write more windstorm and hail policies:

Residential property

- Using and enforcing stronger building codes.
- Give insurers writing windstorm and hail insurance in Tier 1 greater credit against TWIA assessments.
- Fewer or no restrictions on underwriting guidelines.

Commercial property

- Using and enforcing stronger building codes.
- Mandating higher deductibles.
- Reducing reinsurance cost or more accessibility to reinsurance.

Mandatory writing

TDI also surveyed insurers about mandatory writing, such as requiring insurers to write a proportionate share of windstorm and hail insurance in Tier 1, having an assigned risk plan for windstorm and hail insurance, or prohibiting insurers from excluding windstorm and hail coverage. Many insurers responded that these requirements would cause them to reduce their exposure statewide or in Tier 1. Some insurers indicated they would stop writing.

Existing incentives

TDI asked insurers about the effects of recent incentives to write windstorm and hail insurance in Tier 1.

Filing deadlines: Texas Insurance Code 2301.010 allows for a two-year suit-filing deadline and one-year claim-filing deadline. Most insurers using the deadlines said either they were unable to determine how much their windstorm and hail writing in Tier 1 had changed as a result, or they did not think the amount had materially changed. A few insurers using the deadlines estimated some increases or decreases in exposure. Several insurers said that the two-year suit-filing deadline and one-year claim-filing deadline do not provide enough benefit to offset the risks of writing in Tier 1.

TWIA's assessment formula: Some residential property insurers said that participating in TWIA's depopulation program should result in higher credits against TWIA assessments. Some commercial insurers suggested a separate assessment for commercial and residential property insurers. Others suggested that all surplus lines companies writing commercial property should be included in TWIA assessments.

TWIA depopulation statutes: Most insurers did not suggest changes to the depopulation statutes in Texas Insurance Code 2210.701 - 2210.705. Changes that were suggested included:

- Increasing or removing the limit on how much premium insurers can charge for policies obtained through TWIA's assumption reinsurance program.
- Making policies ineligible for TWIA coverage at renewal if there is a private market offer through the depopulation process.
- Shortening the time to opt out of an assumption reinsurance offer.



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