

Subchapter D. Health Group Cooperatives
28 TAC §26.409

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes an amendment to §26.409, concerning the exclusion of state-mandated health benefits for autism spectrum disorder coverage in health benefit plans issued through health group cooperatives. House Bill (HB) 1919, 80th Legislature, Regular Session, effective January 1, 2008, amends Chapter 1355 of the Insurance Code to include, as a state mandated benefit, all generally recognized services prescribed in relation to autism spectrum disorder by an insured's primary care physician in the treatment plan recommended by that physician. However, pursuant to the Insurance Code §1501.0581(i), a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that relates to a particular illness, disease, or treatment. Pursuant to the Insurance Code §1355.001(3), which defines "autism spectrum disorder" as a neurobiological disorder, and the Insurance Code §1355.001(4), which defines a "neurobiological disorder" as an illness of the nervous system, autism spectrum disorder is a particular illness. Therefore, the mandated autism spectrum disorder coverage requirements enacted by HB 1919 are not applicable to health benefit plans that provide coverage with a health group cooperative pursuant to §1508.0581 of the Insurance Code. Chapter 26, Subchapter D, of Title 28 of the Texas Administrative Code regulates health benefit plans issued by health carriers through health group cooperatives. Section 26.409 specifies the state mandates that are not required to be provided by such plans. The proposed amendment is necessary to update existing §26.409(a) to specify that the

state-mandated health benefit of coverage of autism spectrum disorder as required by the Insurance Code Chapter 1355, Subchapter A, is not required in a health benefit plan issued by a health carrier through a health group cooperative.

The proposed amendment, which is consistent with the Insurance Code §1501.0581(i), provides that the state-mandated coverage for autism spectrum disorder, as required by the Insurance Code Chapter 1355, Subchapter A, is not required to be included in a health benefit plan issued by a health carrier through a health group cooperative.

2. FISCAL NOTE. Debra Diaz-Lara, Deputy Commissioner, Health and Workers' Compensation Network Certification and Quality Assurance Division (HWCN), has determined that for each year of the first five years the proposed amendment 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 proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Diaz-Lara also has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit is an updated rule that is consistent with the Insurance Code §1501.0581(i), which provides that a health benefit plan offered through a health group cooperative is not subject to the state mandate requiring coverage of autism spectrum disorder under the Insurance Code Chapter 1355, Subchapter A.

Because the proposed amendment simply updates existing §26.409(a) to comply with the Insurance Code §1501.0581(i) and Chapter 1355, Subchapter A, and does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with the proposed amendment for each year of the first five years the proposed amendment is in effect are the result of the enactment of HB 1919 and not the result of the adoption, enforcement, or administration of the proposed amendment.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposal. Because the proposed amendment simply updates existing §26.409(a) to comply with the Insurance Code §1501.0581(i) and Chapter 1355, Subchapter A, and does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with the proposed amendment are the result of the enactment of HB 1919, and not the result of the adoption, enforcement, or administration of the proposed amendment. In accordance with the Government Code §2006.002(c), the Department has therefore, determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

5. TAKINGS IMPACT ASSESSMENT. The Department 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 4, 2009 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Debra Diaz-Lara, Deputy Commissioner, HWCN Division, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendment is proposed pursuant to the Insurance Code §§1355.015, 1355.001(3) and (4), 1501.0581(i) and 36.001. Section 1355.015 requires that health benefit plans provide autism spectrum disorder coverage for certain children. Pursuant to the Insurance Code §1355.001(3), which defines "autism spectrum disorder" as a neurobiological disorder, and the Insurance Code §1355.001(4), which defines a "neurobiological disorder" as an illness of the nervous

system, autism spectrum disorder is a particular illness. Section 1501.0581(i) provides that except as provided by §1501.0581(n), which concerns coverage for diabetes equipment, supplies, and services, a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that relates to a particular illness, disease, or treatment. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

| <u>Rule</u> | <u>Statute</u> |
|-------------|------------------------------|
| §26.409 | Insurance Code §1501.0581(i) |

9. TEXT.

§26.409. Health Benefit Plans Offered Through Health Group Cooperatives.

(a) A health benefit plan issued by a health carrier through a health group cooperative is not subject to the following state mandates:

(1) - (31) (No change.)

(32) coverage of autism spectrum disorder as required by the Insurance

Code Chapter 1355, Subchapter A.

(b) - (c) (No change.)