

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

INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC §26.30, concerning composite premiums that may be offered by small employer carriers. The new section is adopted without changes to the proposed text published in the August 7, 2015, issue of the *Texas Register* (40 TexReg 5042).

REASONED JUSTIFICATION. 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.

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 CMS on November 6, 2014, to offer carriers a choice between the two-tier federal default and the more familiar four-tier alternative. 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

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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."

Adopted 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. Adopted new §26.30(a) provides definitions for "composite premium," "per-member premium," "tier," and "tier factor." Adopted 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. Adopted 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. Adopted 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. Adopted new §26.30(e) states that the new section applies to health benefit plans issued or renewed on or after November 1, 2015.

SUMMARY OF COMMENTS. TDI received three written comments, all in support of the proposal. The commenters were: BlueCross and BlueShield of Texas and two individuals.

STATUTORY AUTHORITY. The new section is adopted under Insurance Code §§1501.010, 1501.211, 1501.355, 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 1501.355 permits rules adopted under §1501.010 to establish additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers. 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.

TEXT.

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

§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.

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(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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 25, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts new §26.30.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **4130**