

SUBCHAPTER F. RATE REVIEW FOR HEALTH BENEFIT PLANS
28 TAC §§3.501 - 3.506

TEXT.

§3.501. Purpose and Applicability.

(a) The purpose of this subchapter is to implement Insurance Code Chapter 1698 and establish an effective rate review program in the individual and small group markets, consistent with 45 CFR §154.301.

(b) Except as provided in subsection (c) of this section, this subchapter applies to a plan that is subject to Insurance Code Chapter 1698.

(c) This subchapter does not apply to:

(1) short-term limited-duration insurance as defined in Insurance Code Chapter 1509; or

(2) grandfathered health plan coverage as defined by 45 CFR §147.140.

§3.502. Definitions.

(a) For purposes of this subchapter, the following terms have the meanings indicated, except where the context clearly indicates otherwise:

(1) Essential health benefits or EHBs--Health benefits contained in the applicable essential health benefits package as defined in 45 CFR §156.20.

(2) Federal medical loss ratio standard--The applicable medical loss ratio standard for the market segment involved, determined under subpart B of 45 CFR part 158.

(3) HHS--The U.S. Department of Health and Human Services.

(4) Issuer--An insurance company or health maintenance organization that issues a plan that is subject to Insurance Code Chapter 1698.

(5) Index rate--A rate based on the total combined claims costs for providing essential health benefits within the single risk pool of the applicable market.

(6) Plan--As defined in 45 CFR §144.103.

(7) Product--As defined in 45 CFR §154.102.

(8) Single risk pool--With respect to a particular issuer and for the purposes of considering claims experience and developing an index rate, the grouping of all members enrolled in individual market plans or small group market plans that are subject to this chapter, consistent with 45 CFR §156.80.

(9) Unified Rate Review Template or URRT--A spreadsheet that comprises Part I of the rate filing justification, as described in 45 CFR §154.215. For the purposes of this subchapter, the URRT refers to version 5.3 of the template and its associated instructions, or subsequent versions determined to be appropriate by the Secretary of HHS. Issuers are to use subsequent versions of the URRT as directed by Commissioner order.

§3.503. Rating Standards.

Rates filed under this subchapter must comply with all applicable state and federal requirements, including:

(1) Insurance Code Chapter 560;

(2) Insurance Code §843.2071;

(3) Insurance Code §1201.109;

(4) Insurance Code Chapter 1271, Subchapter F;

(5) Insurance Code §1501.215 and §1501.216;

(6) 42 U.S.C. §300gg;

(7) 42 U.S.C. §300gg-94;

(8) 42 U.S.C. §18032(c);

(9) 45 CFR §147.102;

(10) 45 CFR Part 154; and

(11) 45 CFR §156.80.

§3.504. Geographic Rating Areas.

(a) An issuer may vary rates based on rating area, which is determined:

(1) in the individual market, using the primary policy or contract holder's address; and

(2) in the small group market, using the group policy or contract holder's principal business address.

(b) For the purposes of this subchapter, rating areas are established as follows.

(1) Rating area 1 (Abilene) consists of the following Texas counties:

(A) Brown;

(B) Callahan;

(C) Coleman;

(D) Comanche;

(E) Eastland;

(F) Fisher;

(G) Haskell;

(H) Jones;

(I) Kent;

(J) Mitchell;

(K) Nolan;

(L) Runnels;

(M) Scurry;

(N) Shackelford;

(O) Stephens;

(P) Stonewall;

(Q) Taylor; and

(R) Throckmorton.

(2) Rating area 2 (Amarillo) consists of the following Texas counties:

(A) Armstrong;

(B) Briscoe;

(C) Carson;

(D) Castro;

(E) Childress;

(F) Collingsworth;

(G) Dallam;

(H) Deaf Smith;

(I) Donley;

(J) Gray;

(K) Hall;

(L) Hansford;

(M) Hartley;

(N) Hemphill;

(O) Hutchinson;

(P) Lipscomb;

(Q) Moore;

(R) Ochiltree;

(S) Oldham;

(T) Parmer;

(U) Potter;

- (V) Randall;
- (W) Roberts;
- (X) Sherman;
- (Y) Swisher; and
- (Z) Wheeler.

(3) Rating area 3 (Austin) consists of the following Texas counties:

- (A) Bastrop;
- (B) Blanco;
- (C) Burnet;
- (D) Caldwell;
- (E) Fayette;
- (F) Hays;
- (G) Lee;
- (H) Llano;
- (I) Travis; and
- (J) Williamson.

(4) Rating area 4 (Beaumont) consists of the following Texas counties:

- (A) Angelina;
- (B) Hardin;
- (C) Houston;
- (D) Jasper;
- (E) Jefferson;
- (F) Nacogdoches;
- (G) Newton;
- (H) Orange;
- (I) Polk;

(J) Sabine;

(K) San Augustine;

(L) San Jacinto;

(M) Shelby;

(N) Trinity; and

(O) Tyler.

(5) Rating area 5 (Brownsville) consists of the following Texas counties:

(A) Cameron;

(B) Kenedy; and

(C) Willacy.

(6) Rating area 6 (College Station) consists of the following Texas counties:

(A) Brazos;

(B) Burleson;

(C) Grimes;

(D) Leon;

(E) Madison;

(F) Milam;

(G) Robertson; and

(H) Washington.

(7) Rating area 7 (Corpus Christi) consists of the following Texas counties:

(A) Aransas;

(B) Bee;

(C) Jim Wells;

(D) Kleberg;

(E) Live Oak;

(F) Nueces;

(G) Refugio; and

(H) San Patricio.

(8) Rating area 8 (Dallas) consists of the following Texas counties:

(A) Collin;

(B) Dallas;

(C) Ellis;

(D) Hunt;

(E) Kaufman;

(F) Navarro; and

(G) Rockwall.

(9) Rating area 9 (El Paso) consists of the following Texas counties:

(A) Brewster;

(B) Culberson;

(C) El Paso;

(D) Hudspeth;

(E) Jeff Davis; and

(F) Presidio.

(10) Rating area 10 (Houston) consists of the following Texas counties:

(A) Galveston; and

(B) Harris.

(11) Rating area 11 (Killeen/Temple) consists of the following Texas counties:

(A) Bell;

(B) Coryell;

(C) Hamilton;

(D) Lampasas;

(E) Mills; and

(F) San Saba.

(12) Rating area 12 (Laredo) consists of the following Texas counties:

(A) Duval;

(B) Jim Hogg;

(C) McMullen;

(D) Webb; and

(E) Zapata.

(13) Rating area 13 (Longview) consists of the following Texas counties:

(A) Gregg;

(B) Harrison;

(C) Marion;

(D) Panola;

(E) Rusk; and

(F) Upshur.

(14) Rating area 14 (Lubbock) consists of the following Texas counties:

(A) Bailey;

(B) Cochran;

(C) Crosby;

(D) Dickens;

(E) Floyd;

(F) Garza;

(G) Hale;

(H) Hockley;

(I) King;

(J) Lamb;

(K) Lubbock;

(L) Lynn;

(M) Motley;

(N) Terry; and

(O) Yoakum.

(15) Rating area 15 (McAllen) consists of the following Texas counties:

(A) Brooks;

(B) Hidalgo; and

(C) Starr.

(16) Rating area 16 (Midland/Odessa) consists of the following Texas counties:

(A) Andrews;

(B) Borden;

(C) Crane;

(D) Dawson;

(E) Ector;

(F) Gaines;

(G) Glasscock;

(H) Howard;

(I) Loving;

(J) Martin;

(K) Midland;

(L) Pecos;

(M) Reeves;

(N) Terrell;

(O) Upton;

(P) Ward; and

(Q) Winkler.

(17) Rating area 17 (San Angelo) consists of the following Texas counties:

(A) Coke;

(B) Concho;

(C) Crockett;

(D) Irion;

(E) Kimble;

(F) Mason;

(G) McCulloch;

(H) Menard;

(I) Reagan;

(J) Schleicher;

(K) Sterling;

(L) Sutton; and

(M) Tom Green.

(18) Rating area 18 (San Antonio) consists of the following Texas counties:

(A) Atascosa;

(B) Bandera;

(C) Bexar;

(D) Comal;

(E) Dimmit;

(F) Edwards;

(G) Frio;

(H) Gillespie;

(I) Gonzales;

(J) Guadalupe;

(K) Kendall;

(L) Kerr;

(M) Kinney;

(N) La Salle;

(O) Maverick;

(P) Medina;

(Q) Real;

(R) Uvalde;

(S) Val Verde;

(T) Wilson; and

(U) Zavala.

(19) Rating area 19 (Sherman/Dennison) consists of the following Texas counties:

(A) Cooke;

(B) Fannin; and

(C) Grayson.

(20) Rating area 20 (Texarkana) consists of the following Texas counties:

(A) Bowie;

(B) Camp;

(C) Cass;

(D) Delta;

(E) Franklin;

(F) Hopkins;

(G) Lamar;

(H) Morris;

(I) Red River; and

(J) Titus.

(21) Rating area 21 (Tyler) consists of the following Texas counties:

(A) Anderson;

(B) Cherokee;

(C) Henderson;

(D) Rains;

(E) Smith;

(F) Van Zandt; and

(G) Wood.

(22) Rating area 22 (Victoria) consists of the following Texas counties:

(A) Calhoun;

(B) DeWitt;

(C) Goliad;

(D) Jackson;

(E) Karnes;

(F) Lavaca; and

(G) Victoria.

(23) Rating area 23 (Waco) consists of the following Texas counties:

(A) Bosque;

(B) Falls;

(C) Freestone;

(D) Hill;

(E) Limestone; and

(F) McLennan.

(24) Rating area 24 (Wichita Falls) consists of the following Texas counties:

(A) Archer;

- (B) Baylor;
- (C) Clay;
- (D) Cottle;
- (E) Foard;
- (F) Hardeman;
- (G) Jack;
- (H) Knox;
- (I) Montague;
- (J) Wichita;
- (K) Wilbarger; and
- (L) Young.

(25) Rating area 25 (Fort Worth) consists of the following Texas counties:

- (A) Denton;
- (B) Erath;
- (C) Hood;
- (D) Johnson;
- (E) Palo Pinto;
- (F) Parker;
- (G) Somervell;
- (H) Tarrant; and
- (I) Wise.

(26) Rating area 26 (Houston SW) consists of the following Texas counties:

- (A) Austin;
- (B) Brazoria;
- (C) Colorado;
- (D) Fort Bend;

(E) Matagorda;

(F) Waller; and

(G) Wharton.

(27) Rating area 27 (Houston NE) consists of the following Texas counties:

(A) Chambers;

(B) Liberty;

(C) Montgomery; and

(D) Walker.

§3.505. Required Rate Filings.

(a) An issuer may not use a rate with respect to a plan if:

(1) the issuer has not filed the rate with TDI for review;

(2) the rate filing does not comply with the standards in §3.503 of this subchapter; or

(3) the rate filing has been withdrawn.

(b) Each issuer must submit an annual rate filing no later than June 15 to be used with any individual or small group market plan that will be issued effective on or after January 1 in the following calendar year. A small group issuer may include scheduled quarterly trend increases within the annual rate filing. An issuer may only have one active annual single risk pool rate filing in each market. An issuer may not modify an annual rate filing later than October 1 prior to the applicable calendar year.

(c) A small group issuer may submit a rate filing for a quarterly rate change that would take effect on April 1, July 1, or October 1. An issuer may only have one active quarterly single risk pool rate filing. An issuer must submit a quarterly rate filing at least 105 days before the effective date of the rate change.

(d) A rate filing must include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Issuers should not enter cost-sharing reduction plan variations separately.

(e) Rate filings made under this subchapter must be submitted through the electronic system designated by TDI, according to any technical instructions provided for the electronic system and consistent with the rules in Chapter 3, Subchapter A of this title.

(f) Rate filings made under this subchapter must use the templates and instructions made available on TDI's website: www.tdi.texas.gov/health/ratereview.html, and include the following items:

(1) the URRT (Part I), which includes worksheets related to market experience, product and plan level calculations, and rating area factors;

(2) for a rate increase that is 15% or more applicable to a 12-month period that begins on January 1, as provided by 45 CFR §154.200, a written description justifying the rate increase (Part II), consistent with 45 CFR §154.215(e);

(3) rating filing documentation (Part III), consistent with 45 CFR §154.215(f), which includes an unredacted actuarial memorandum signed by a certified actuary;

(4) the rates table template, which identifies the applicable rate for each plan, depending on an individual's rating area, tobacco use, and age;

(5) the enrollment spreadsheet that contains, with respect to each county:

(A) the number of covered lives, as of May 31 of the current year, that are enrolled in each of the following plan types, separated based on whether the enrollment is through the federal exchange or off exchange:

(i) catastrophic plans;

(ii) bronze plans;

(iii) silver plans;

(iv) gold plans; and

(v) platinum plans;

(B) whether the plan is available in the county in the current calendar year; and

(C) whether the plan will be available in the county in the next calendar year; and

(6) the actuarial value and cost share factor spreadsheet that contains:

(A) the plan ID specified in field 1.4 of the URRT; and

(B) the component factors of field 3.3 of the URRT, which should not include adjustments that take into account the morbidity of the population expected to enroll in the plan, including:

(i) the actuarial value of the plan, calculated consistent with 45 CFR §156.135;

(ii) the induced demand factor; and

(iii) the cost-sharing factor.

(g) On request from TDI, an issuer must provide any additional information needed to evaluate the rate filing.

(h) An issuer that does not intend to issue a plan that would require a rate filing for the next calendar year, but that has enrollment in a plan that is subject to this subchapter in the current year or the prior year, must submit the data for such plan under paragraphs (1) and (2) of this subsection, as applicable, to TDI no later than June 15. For example, in June of 2022, an issuer must submit data under paragraph (1) of this subsection for the 2021 calendar year, and data under paragraph (2) of this subsection for the first five months of calendar year 2022. An issuer that does not have data to submit under paragraph (2) of this subsection is still required to submit data under paragraph (1) of this subsection.

(1) For prior year cumulative data, an issuer must submit:

(A) allowed claim costs, defined as total payments made under the plan to health care providers on behalf of covered members and including payments made by the issuer, member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and net payments from any federal or state reinsurance arrangement or program;

(B) incurred claim costs, defined as allowed claim costs as specified in subparagraph (A) of this paragraph, less member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and any net payments from a federal or state reinsurance arrangement;

(C) earned premium; and

(D) member months.

(2) For current year cumulative data through May 31, an issuer must submit:

(A) earned premium;

(B) member months; and

(C) the enrollment spreadsheet required under subsection (f)(5) of this section.

§3.506. Review of Rate Filings.

(a) Upon receipt of a rate filing under this subchapter, TDI will evaluate whether the issuer has provided sufficient data and documentation. If the level of detail provided by the issuer under §3.505 of this title does not provide a sufficient basis for TDI to make a determination, TDI will request additional information as necessary. The issuer must provide the requested information within 10 business days. If the issuer fails to provide the requested information, TDI will consider the filing withdrawn.

(b) In reviewing rates filed under this subchapter, TDI will examine:

(1) the reasonableness of the assumptions used by the issuer to develop the rates and the validity of the historical data underlying the assumptions;

(2) the issuer's data related to past projections and actual experience;

(3) the reasonableness of assumptions used by the issuer to estimate the rate impact of the reinsurance and risk adjustment programs under 42 U.S.C. §18061 and §18063; and

(4) the issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values, and other market reform rules as required by the Affordable Care Act.

(c) In reviewing rates filed under this subchapter, TDI will consider the following factors to the extent applicable to the filing under review:

(1) factors specified in Insurance Code §1698.052(b) and (d);

(2) the factors listed in 45 CFR §154.301(a)(4); and

(3) whether the issuer complies with the rating standards provided under §3.503 of this subchapter.

(d) In reviewing rates for a qualified health plan, TDI will also consider the factors identified in Insurance Code §1698.052(c).

(e) TDI will determine that a rate filing is unreasonable if, based on the criteria identified in this subsection, the rate is excessive, unjustified, or unfairly discriminatory.

(1) A rate filing is excessive if it causes the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage. In determining whether the rate filing causes the premium charged to be unreasonably high in relationship to the benefits provided, TDI will consider:

(A) whether the rate filing results in a projected medical loss ratio below the federal medical loss ratio standard in the applicable market to which the rate filing applies, after accounting for any adjustments allowable under federal law;

(B) whether one or more of the assumptions on which the rate filing is based is not supported by substantial evidence; and

(C) whether the choice of assumptions or combination of assumptions on which the rate increase is based is unreasonable.

(2) A rate filing is unjustified if the issuer provides data or documentation that is incomplete, inadequate, or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.

(3) A rate filing is unfairly discriminatory if the filing results in premium differences between insureds within similar risk categories that:

(A) are not permissible; or

(B) do not reasonably correspond to differences in expected costs.

(f) Before making a determination that a rate filing is noncompliant or unreasonable, TDI will communicate its objections to the issuer.

(g) If a rate filing fails to comply with the rating standards provided under §3.503 of this title, TDI will identify the deficiency and ask for corrections. If the issuer fails to make necessary corrections within 10 business days, TDI will consider the filing withdrawn.

(h) If TDI determines that a rate filing is unreasonable but that the issuer is legally permitted to implement the rate filing, TDI will issue a final determination and a brief explanation. After receiving a final determination that a rate increase is unreasonable, the issuer must submit a final justification for the rate increase and prominently post information concerning the rate increase, consistent with 45 CFR §154.230.

§3.507. Public Disclosure and Input.

(a) Information related to proposed annual rate increases of 15% or more will be publicly available on the website published by the Centers for Medicare and Medicaid

Services (CMS). A link to the CMS website will be posted on TDI's website: www.tdi.texas.gov/health/ratereview.html.

(b) Public comments concerning proposed rate increases can be sent to RateReview@tdi.texas.gov.

(c) Final rate increases will be publicly available on the website published by CMS no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

(d) TDI will make information related to proposed or final rate filings available to the public in a manner consistent with 45 CFR §154.301(b).