

Subchapter F. Rate Review for Health Benefit Plans
28 TAC §3.505

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.505, to update the cost-sharing reduction (CSR) and clarify the actuarial value (AV) factors that health benefit plan issuers use in setting premium rates for plans sold to individuals and small groups. These amendments are needed to reflect changes in enrollment over time and provide additional guidance in the setting of rates. TDI anticipates adopting the amendments to be effective June 1, 2025, and TDI will begin enforcing the changes for rates applicable to plans to be issued or renewed effective on or after January 1, 2026.

EXPLANATION. Amendments to §3.505 ensure that premium rates for silver plans sold to individuals through the health insurance exchange are sufficient to cover the cost of CSRs that issuers are required to provide certain consumers within silver plan variations under federal law (42 USC §18071). In 2017, the federal government stopped reimbursing issuers for the cost of providing CSRs. Since 2018, issuers have adjusted premiums for silver plans sold on the exchange to account for those costs. Amendments to §3.505 will ensure that premium rates for silver plans sold to individuals through the health insurance exchange are sufficient to cover the cost of CSRs that issuers are required to provide certain consumers within silver plan variations under federal law (42 USC §18071).

Senate Bill 1296, 87th Legislature, 2021, directed the commissioner to review rates and consider, for silver plans, "whether the rate is appropriate for the plan in relation to the rates charged for qualified health plans offering different levels of coverage, taking into account any funding or lack of funding for cost-sharing reductions and the covered benefits for each level of coverage." In 2022, TDI adopted a CSR factor of 1.35 within §3.505(f)(6)(B)(iii).

TDI develops the CSR factor on the basis of (1) data that reflects the number of individuals enrolled in each silver plan variation, (2) the actuarial value associated with each silver plan variation, and (3) the induced demand factor (IDF) that TDI assigns to each silver plan variation. TDI would generally assign IDFs similar to the IDFs set by the Centers for Medicare & Medicaid Services (CMS), except for platinum-level plans, because TDI actuaries believe the IDF factor of 1.15 is not justified for plans with an AV of 94%. For the purposes of the CSR factor, the TDI-established IDFs have been:

- 1.03 for plans with an AV of 70% or 73%;
- 1.08 for plans with an AV of 87%;
- 1.09 for plans with an AV of 94%; and
- 1.15 for plans with an AV of 100%.

The methodology for calculating the CSR factor has been as follows:

(1) Divide the average actuarial value provided by silver plans on the exchange based on the latest enrollment data by 70%.

(2) Divide the average induced demand factor associated with silver plans on the exchange based on the latest enrollment data by 1.03.

(3) Multiply the resulting number from paragraph (1) by the resulting number from paragraph (2).

Based on the enrollment data for 2021, TDI calculated a CSR factor of 1.35. However, the same methodology would result in a CSR factor of 1.40 based on enrollment reported in 2024.

TDI also proposes to amend the current reference to AV in the rule to clarify that issuers are required to use the federal AV calculator in developing their individual and small group rates.

Descriptions of the section's proposed amendments follow.

Section 3.505. TDI proposes to amend the CSR factor in subsection (f)(6)(B)(iii) to replace the old factor of 1.35 with a new factor of 1.40. As previously described, this new factor is based on the same methodology that TDI has historically used, but it now reflects the changes in enrollment currently seen across the silver-level-plan variations. TDI is also proposing to amend the rule text in §3.505(f)(6)(B)(i) that requires issuers to provide the AV for their individual and small group plans, which must be "calculated consistent with 45 CFR §156.135." The amendment will clarify that issuers are required to use the federal AV calculator in developing their rates. This will support compliance with federal single risk pool requirements by ensuring issuers use enrollee health status only when setting their index rate used to price all their plans. Enforcing the single risk pool standards and preventing issuers from setting rates that reflect plan-to-plan variations in enrollee health status within the pricing AV will support a level playing field. The changes proposed to this section will apply to rate filings made for plans to be issued or renewed effective on or after January 1, 2026.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code §1698.052 and that consumers are charged insurance premiums that appropriately reflect the benefits provided. As proposed, the CSR factor will increase to 1.40 for coverage starting in 2026. An increased CSR factor will result in Texas consumers who qualify for advance payments of the premium tax credit under federal law receiving higher levels of tax credits, which will increase their purchasing power, and may reduce the number of individuals who are uninsured or underinsured. Clarifying the reference to the federal AV calculator will have the benefit of ensuring that issuers follow single risk pool rating requirements, and that the AV does not interfere with the effect of the uniform CSR factor.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code §1698.052 because they do not impose requirements beyond those in statute. Insurance Code §1698.051(b) requires the commissioner to "establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with this chapter and other applicable state and federal law. . . ." This process requires health plans to submit rates by June 15 of each year. Insurance Code §1698.052(c)(2) directs the commissioner to consider, for silver plans, "whether the rate is appropriate for the plan in relation to the rates charged for qualified health plans offering different levels of coverage, taking into account any funding or lack of funding for cost-sharing reductions and the covered benefits for each level of coverage. . . ." Changing the CSR factor is not expected to increase costs because issuers will include the new factor in their annual rate filing, and the factor will be sufficient to capture the costs associated with providing CSRs. Likewise, making the AV requirement clearer is not expected to increase costs because it is a clarification and not a substantive

change. In addition, using the federal AV calculator will eliminate the need for issuers to provide independent actuarial analysis and justification for the AV. The clarification will not impact the total amount of premium that issuers are able to charge for individual and small group health plans.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to any small or micro businesses that may be subject to the proposed amendments. The amendments will not impact rural communities, because the rule only affects health benefit plan issuers. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 9, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes to amend §3.505 under Insurance Code §§1698.051(b), 1698.052, 1701.060, and 36.001.

Insurance Code §1698.051(b) requires that the commissioner by rule establish a process under which the commissioner will review individual and small group health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal laws, including 42 USC §§300gg, 300gg-94, and 18032(c) and those sections' implementing regulations, including rules establishing geographic rating areas.

Insurance Code §1698.052 requires that the commissioner adopt rules and provide guidance regarding requirements related to individual health benefit plan rates.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purposes of Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.505 implements Insurance Code Chapter 1698.

TEXT.

§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 title (relating to Rating Standards); or

(3) the rate filing has been withdrawn.

(b) Each issuer must submit an annual rate filing no later than June 15 for 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 have only 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 calendar year for which the filing was submitted.

(c) A small group issuer may submit a rate filing for a quarterly rate change that takes effect on April 1, July 1, or October 1. A small group issuer may have only one active quarterly single risk pool rate filing at a given time. Notwithstanding §26.11 of this title (relating to Restrictions Relating to Premium Rates), a small group 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 are not required to enter CSR 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 and procedures in Chapter 3, Subchapter A, of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) and §11.301 of this title (relating to Filing Requirements).

(f) Rate filings made under this subchapter must include the following:

(1) the URRT (Part I);

(2) for a rate increase that is 15% or more within a 12-month period that begins on January 1, as determined by 45 CFR §154.200(b) and (c), concerning Rate Increases Subject to Review, a written description justifying the rate increase (Part II) that complies with 45 CFR §154.215(e), concerning Submission of Rate Filing Justification;

(3) rating filing documentation (Part III) that complies with 45 CFR §154.215(f) and that includes an unredacted actuarial memorandum signed by a qualified actuary;

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

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

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

(i) catastrophic plans;

(ii) bronze plans;

(iii) silver plans, separated as follows:

(I) silver plans with an AV of 70%;

(II) silver plans with an AV of 73%;

(III) silver plans with an AV of 87%;

(IV) silver plans with an AV of 94%; and

(V) silver plans with an AV of 100%;

(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) an AV and cost-sharing factor spreadsheet that contains:

(A) the plan ID specified in the URRT; and

(B) the component factors of an AV and cost-sharing design of plan field in the URRT, which should not include adjustments that account for the morbidity of the population expected to enroll in the plan, including:

(i) the AV used in the pricing of the plan, which must be the same as the AV used to comply with federal requirements for determining the plan's actuarial value, currently found in ~~[calculated consistent with]~~ 45 CFR §156.135, concerning AV Calculation for Determining Level of Coverage;

(ii) the induced-demand factor of 1.00 for bronze plans, 1.03 for silver plans, 1.08 for gold plans, and 1.15 for platinum plans; and

(iii) for individual silver plans on the exchange, a CSR adjustment factor of 1.40 ~~[1.35]~~, that accounts for the average costs attributable to CSRs, to the extent that issuers are not otherwise being reimbursed for those costs. If issuers are being reimbursed for those costs by HHS, consistent with 42 USC §18071, concerning Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans, then the CSR adjustment factor would not apply.

(g) Issuers may submit data using the templates available on TDI's website at www.tdi.texas.gov/health/ratereview.html.

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

(i) 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 March 31, an issuer must submit:

(A) earned premium;

(B) member months; and

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

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on October 21, 2024.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance