

August 4, 2014

Sara Waitt
General Counsel
Texas Department of Insurance
333 Guadalupe St.
Austin, Texas 78701

Jan M. Graeber
Director and Chief Actuary
Rate and Form Review Office
Life, Accident and Health Section
Regulatory Policy Division
Texas Department of Insurance
333 Guadalupe St.
Austin, Texas 78701

Via email: ChiefClerk@tdi.texas.gov and LHLComments@tdi.texas.gov

Dear Ms. Waitt and Ms. Graeber:

Thank you for the opportunity to comment on the proposed rules to add new 28 TAC Chapter 21, Subchapter SS, Continuation and Conversion Provisions. We support the rules in general, but recommend additions to ensure consumers are better educated and informed of their rights.

Our primary concern is that the notices as required under §21.5311(b)(3) and §21.5321 are insufficient to inform enrollees or members of their potential eligibility for alternate coverage through the Health Insurance Marketplace, possibly with financial help to lower premiums and out-of-pocket costs.

Incorporating information on potential Marketplace and subsidy eligibility in continuation and conversion notices is important for three reasons:

1. The interactions between a consumer's right for continuation or conversion and right to enroll in the Marketplace are actually relatively confusing. Consumers deserve to have this information laid out clearly, all in one place.
2. Continuation and conversion can be difficult to afford. Knowledge of Marketplace subsidies may help low- and moderate-income consumers maintain insurance coverage, as opposed to becoming uninsured.

People eligible for continuation or conversion lose their employer's contribution toward coverage, making coverage much less affordable. On top of that, the event that triggers a consumer's right to continuation or conversion, like a reduction in work hours, may also have significantly reduced their income.

While, low- and moderate-income consumers losing job-based coverage may be eligible for Marketplace subsidies, research shows that lack of knowledge about subsidies is common and creates significant barriers to enrollment, resulting in people who want insurance going uninsured.

Learning about potential Marketplace subsidies through a continuation or conversion notice may provide a lifeline to people losing job-based coverage, enabling them to maintain coverage instead of becoming newly uninsured.

3. To balance the single risk pools in and outside of the Marketplace, it is important that younger and healthier people enroll. Knowledge of potential subsidies for coverage helps motivate populations not motivated by an immediate need for health care to enroll, benefiting the overall risk pool and stability of premiums.

To date, carriers have approached providing information about the Marketplace and subsidies in different ways, some of which fail to provide complete information on consumer rights or more affordable options. Within policy non-renewal/auto-renewal notices sent at the end of 2013, we saw examples of letters from carriers that failed to mention the Marketplace or its phone number/website at all and mentioned the availability of subsidies only in a footnote. Consumers Reports [wrote](#) about several incomplete or misleading notices it reviewed, and the Wall Street Journal [reported](#) on misleading notices and actions taken by regulators in some states. Given the importance of consumer education about enrollment rights and options, we recommend a more standardized approach with continuation and conversion notices.

Recommendation: We recommend that TDI require that both continuation and conversion notices provide basic, concise information on the Marketplace, including its website and toll-free number, as well as a statement about the availability of financial help for eligible consumers to lower monthly premiums, deductibles, and co-pays, such as the following:

§21.5311(b)(3)(G): the following English and Spanish statement at the end of the notice: "If you have questions regarding your rights for continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Other health coverage options may be available to you, including coverage through the Health Insurance Marketplace at www.HealthCare.gov or 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that costs less than continuation coverage. If you have additional questions about continuation or other coverage options that might be available to you, you may contact the Texas Department of Insurance, toll-free, at (800) 252-3439 or visit this Internet site: <http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing>."

We recommend adding the above text in Spanish to the Spanish language requirement in §21.5311(b)(3)(G) and adding similar language to the conversion notice requirements §21.5321.

Our recommended addition to the notice language is lifted with minor edits from the Department of Labor [COBRA Model Election Notice](#), which contains information advising consumers of the existence of the Marketplace and subsidies, and it includes a link to the Marketplace website for more information. **The DOL notice alone cannot serve as a replacement to a state-mandated notice because employees of firms not subject to COBRA will *only* get state-mandated notices and continuation options.**

Recommendation: We applaud the Department's inclusion in §21.5311(b)(3)(G) of a specific TDI website link that has consumer information on losing job-based coverage. We recommend: 1) keeping that link in the continuation notice, 2) adding the link to conversion notices required in §21.5321, and 3) updating the information on the linked TDI website to provide a more complete picture of options available when you lose your job-based coverage. We've attached a memo to Jan Graeber and Melissa Hield with recommendations for information to be added on TDI's website related to losing group coverage.

In addition to the recommendations above, we support the department's proposed construction of §21.5310(d)(5)(D) mentioned in the preamble as not including "the availability of guaranteed issue coverage under the Patient Protection and Affordable Care Act." This construction is consistent with past interpretation, which did not allow for the termination of continuation coverage because of the availability of guaranteed issue coverage in the Texas Health Insurance Risk Pool.

We also support the department's proposed application of the rule to small and micro business carriers for all of the reasons provided in the preamble. We are especially concerned that any exemption would be in direct conflict with the statute's intention of making continuous coverage options available and would leave some consumers, depending solely on the number of employees their carrier has, with fewer coverage options and consumer protections.

We appreciate all of the Department's work on these proposed rules. We recognize the importance of continuation and conversion rights, as well as consumer education on those rights. If you have any questions related to our comments, please feel free to contact me at (512) 320-0222 ext. 117 or pogue@cphp.org.

Sincerely,



Stacey Pogue
Senior Policy Analyst