SUBCHAPTER EE. High Deductible Health Plans
28 TAC §§21.3901 - 21.3905

1. INTRODUCTION. The Texas Department of Insurance proposes new §§21.3901 - 21.3905 concerning high deductible health plans (HDHP). The 79th Texas Legislature's enactment of House Bill 1602 added new Chapter 1653 to the Texas Insurance Code, authorizing a carrier to apply deductible or copayment requirements to benefits, including state-mandated health benefits, to qualify a health benefit plan as an HDHP. The department proposes these new sections to implement HB 1602.

To qualify as an HDHP, a health plan must meet standards specified in §223, Internal Revenue Code of 1986. Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added §223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. Among the requirements for an individual to qualify as an eligible individual under §223(c)(1) (and thus to be eligible to make tax-favored contributions to an HSA) is the requirement that the individual be covered under an HDHP, a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses. Generally, an HDHP may not provide benefits for any year until the deductible for that year is satisfied. Section 223(c)(2)(C), however, provides a safe harbor in that a plan does not lose its status as an HDHP by reason of failing to have a deductible for preventive care. An HDHP may therefore provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible.

Texas law requires health plans to provide certain health care benefits or services without regard to a deductible, and health carriers should take care to follow federal guidance regarding whether such benefits or services fall within the §223(c)(2)(C) safe harbor for preventive care. For example, Texas Insurance Code §1367.053 requires coverage of certain childhood immunizations through age six without regard to a deductible, copayment, or coinsurance requirement. Similarly, Texas Insurance Code §1367.103 requires coverage of certain screening tests for hearing loss in children from birth through the date the child is 30 days old without regard to deductible or dollar limits. The federal government has identified both these types of benefits or services as within the preventive safe harbor (See IRS Notice 2004-23), so this rule would not authorize a carrier to apply a deductible or copayment requirement to these benefits or services.

The IRS has provided transitional relief for individuals in states where HDHPs are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of §223(c)(2)(A)(i). The transitional relief covers months before January 1, 2006. To achieve full implementation of HB 1602, this proposal contains a provision making the rule applicable to plans issued, amended to be effective, renewed, or issued for delivery on or after that date. This provision will ensure that HDHPs in Texas will be able to maintain federal tax qualification when the transitional relief expires on or after January 1, 2006. Carriers seeking to amend existing plans not scheduled for renewal before

January 1, 2006 must comply with all state and federal laws before effecting amendment, including obtaining the consent of the policyholder where required.

Proposed new §21.3901 expresses the purpose of the rule. Proposed new §21.2102 includes definitions of terms used in the subchapter. Proposed new §21.2103 provides that high deductible health plans are subject to state mandated health benefits, except as provided by proposed new §21.2104, which defines the scope of the exemption from state requirements as necessary to qualify a health benefit plan as a high deductible health plan. Proposed new §21.3905 makes the subchapter applicable to coverage under a health benefit plan issued, amended to be effective, renewed, or issued for delivery on or after January 1, 2006.

2. FISCAL NOTE. Ana Smith-Daley, Acting Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed sections 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 rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIC/COST NOTE. Ms. Smith-Daley has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be greater access to health care coverage due to availability of high deductible health plans. Any costs of compliance with the proposed new sections are the result of the 79th Legislature's (Regular Session) enactment of HB

1602, which created Chapter 1653. Accordingly the proposal, if adopted, will not have an adverse economic effect on small and micro businesses.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 12, 2005 to Gene 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 comment must be submitted simultaneously to Bill Bingham, Deputy for Regulatory Matters, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The department will consider the adoption of the proposed amendments in a public hearing under Docket Number 2627, scheduled for 9:30 a.m. on December 1, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

5. STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§1653.003 and 36.001. Section 1653.003 provides rulemaking authority to the Commissioner of Insurance for the purpose of administering the statute and directs the Commissioner to adopt rules necessary to implement the chapter. 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.

6. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 1653.

7. TEXT.

§21.3901. Purpose. The purpose of this subchapter is to implement Texas Insurance Code Chapter 1653 which allows health carriers to apply deductible or copayment requirements to benefits, including state-mandated health benefits, as necessary to qualify health benefit plans as high deductible health plans.

§21.3902. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accident and health insurance policy—means any policy or contract that provides insurance against loss resulting from:

(A) accidental bodily injury;

(B) accidental death; or

(C) sickness.

(2) Evidence of coverage—means any certificate, agreement, or contract, including a blended contract, that:

(A) is issued to an enrollee; and

(B) states the coverage to which the enrollee is entitled.

(3) Health benefit Plan—an accident and health insurance policy or evidence of coverage.

(4) Health carrier—A health insurer or health maintenance organization.

(5) Health insurer—includes

(A) a life, health, and accident insurance company;

(B) a mutual insurance company, including:

(i) a mutual life insurance company; and

(ii) a mutual assessment life insurance company;

(C) a local mutual aid association;

(D) a mutual or natural premium life or casualty insurance company;

(E) a general casualty company;

(F) a Lloyd's plan;

(G) a reciprocal or interinsurance exchange;

(H) a nonprofit hospital, medical, or dental service corporation, including a corporation operating under Texas Insurance Code Chapter 842; and

(I) another insurer issuing an accident and health insurance policy and required by law to be authorized by the department.

(6) Health maintenance organization—means a person who arranges for or provides to enrollees on a prepaid basis a health care plan, a limited health care service plan, or a single health care service plan.

(7) High deductible health benefit plan--has the meaning assigned by Section 223, Internal Revenue Code of 1986.

§21.3903. Applicability of state mandates to high deductible health plans.

Subject to §21.3904 of this subchapter (relating to Exemption from State Mandates for High Deductible Health Plans), a high deductible health plan is subject to any law mandating a minimum health insurance benefit or reimbursement.

§21.3904. Exemption from State Mandates for High Deductible Health Plans.

(a) A health carrier or other entity issuing a health benefit plan may apply deductible or copayment requirements to benefits and services, including state-mandated health benefits and services, as necessary to qualify the health benefit plan as a high deductible health plan.

(b) If a health carrier or other entity issuing a health benefit plan pursuant to subsection (a) of this section, applies to benefits or services a deductible or copayment requirement which would otherwise be in violation of state law, the carrier or other entity may apply the requirement only to the extent and in the minimum amount necessary to qualify the health benefit plan as a high deductible health plan.

§21.3905. Applicability. This subchapter applies to coverage under a health benefit plan issued, amended to be effective, renewed, or issued for delivery on or after January 1, 2006.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on _____, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance