

Subchapter D. Health Group Cooperatives
28 TAC §26.409

1. **INTRODUCTION.** The Commissioner of Insurance adopts an amendment to §26.409, concerning the exclusion of state-mandated health benefits for autism spectrum disorder coverage in health benefit plans issued through health group cooperatives. The amendment is adopted without changes to the proposed text published in the April 3, 2009 issue of the *Texas Register* (34 TexReg 2229).

2. **REASONED JUSTIFICATION.** House Bill (HB) 1919, 80th Legislature, Regular Session, effective January 1, 2008, amends Chapter 1355 of the Insurance Code to include, as a state mandated benefit, all generally recognized services prescribed in relation to autism spectrum disorder by an insured's primary care physician in the treatment plan recommended by that physician. However, pursuant to the Insurance Code §1501.0581(i), a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that relates to a particular illness, disease, or treatment. Pursuant to the Insurance Code §1355.001(3), which defines "autism spectrum disorder" as a neurobiological disorder, and the Insurance Code §1355.001(4), which defines a "neurobiological disorder" as an illness of the nervous system, autism spectrum disorder is a particular illness. Therefore, the mandated autism spectrum disorder coverage requirements enacted by HB 1919 are not applicable to health benefit plans that provide coverage with a health group cooperative pursuant to §1501.0581 of the Insurance

Code. Chapter 26, Subchapter D, of Title 28 of the Texas Administrative Code regulates health benefit plans issued by health carriers through health group cooperatives. Section 26.409 specifies the state mandates that are not required to be provided by such plans. The amendment is necessary to update existing §26.409(a) to specify that the state-mandated health benefit of coverage of autism spectrum disorder as required by the Insurance Code Chapter 1355, Subchapter A, is not required in a health benefit plan issued by a health carrier through a health group cooperative.

3. HOW THE SECTION WILL FUNCTION. The adopted amendment, which is consistent with the Insurance Code §1501.0581(i), provides that the state-mandated coverage for autism spectrum disorder, as required by the Insurance Code Chapter 1355, Subchapter A, is not required to be included in a health benefit plan issued by a health carrier through a health group cooperative.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendment is adopted pursuant to the Insurance Code §§1355.015, 1355.001(3) and (4), 1501.0581(i) and 36.001. Section 1355.015 requires that health benefit plans provide autism spectrum disorder coverage for certain children. Pursuant to the Insurance Code §1355.001(3), which defines “autism spectrum disorder” as a neurobiological disorder, and the Insurance Code

§1355.001(4), which defines a “neurobiological disorder” as an illness of the nervous system, autism spectrum disorder is a particular illness. Section 1501.0581(i) provides that except as provided by §1501.0581(n), which concerns coverage for diabetes equipment, supplies, and services, a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that relates to a particular illness, disease, or treatment. 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. TEXT.

§26.409. Health Benefit Plans Offered Through Health Group Cooperatives.

(a) A health benefit plan issued by a health carrier through a health group cooperative is not subject to the following state mandates:

(1) the offer of in vitro fertilization coverage as required by Insurance Code §§1366.001 and 1366.003;

(2) coverage of HIV, AIDS, or HIV-related illnesses as required by Insurance Code §§1364.001 and 1364.003;

(3) coverage of chemical dependency and stays in a chemical dependency treatment facility as required by Insurance Code Chapter 1368;

(4) coverage or offer of coverage of serious mental illness as required by Insurance Code §§1355.001 - 1355.007;

(5) the offer of mental or emotional illness coverage as required by Insurance Code §1355.106;

(6) coverage of inpatient mental health and stays in a psychiatric day treatment facility as required by Insurance Code §1355.104;

(7) the offer of speech and hearing coverage as required by Insurance Code Chapter 1365;

(8) coverage of mammography screening for the presence of occult breast cancer as required by Insurance Code §1356.005;

(9) standards for proof of Alzheimer's disease as required by Insurance Code §1354.002;

(10) coverage of stays in a crisis stabilization unit and/or residential treatment center for children and adolescents as required by Insurance Code §§1355.055 and 1355.056;

(11) continuation of coverage of certain drugs under a drug formulary as required by Insurance Code §1369.055;

(12) coverage of off-label drugs as required by Insurance Code §§1369.001 - 1369.005;

(13) coverage for formulas necessary for the treatment of phenylketonuria as required by Insurance Code Chapter 1359;

(14) coverage of contraceptive drugs and devices as required by Insurance Code §§1369.101 - 1369.109 and §21.404(3) of this title (relating to Underwriting);

(15) coverage of diagnosis and treatment affecting temporomandibular joint and treatment for a person unable to undergo dental treatment in an office setting or under local anesthesia as required by Insurance Code Chapter 1360;

(16) coverage of bone mass measurement for osteoporosis as required by Insurance Code §1361.003;

(17) coverage of diabetes care as required by Insurance Code Chapter 1358;

(18) coverage of childhood immunizations as required by Insurance Code §§1367.051 - 1367.055 and 1367.053;

(19) coverage for screening tests for hearing loss in children and related diagnostic follow-up care as required by Insurance Code §§1367.101 - 1367.105;

(20) offer of coverage for therapies for children with developmental delays as required by Insurance Code Chapter 1367, Subchapter E;

(21) coverage of certain tests for detection of prostate cancer as required by Insurance Code Chapter 1362;

(22) coverage of acquired brain injury treatment/services as required by Insurance Code Chapter 1352;

(23) coverage of certain tests for detection of colorectal cancer as required by Insurance Code Chapter 1363;

(24) coverage for reconstructive surgery for craniofacial abnormalities in a child as required by Insurance Code §§1367.151 - 1367.154;

(25) coverage of rehabilitation therapies as required by Insurance Code §1271.156;

(26) limitations on the treatment of complications in pregnancy established by §21.405 of this title (relating to Policy Terms and Conditions);

(27) coverage for services related to immunizations and vaccinations under managed care plans as required by Insurance Code Chapter 1353;

(28) limitations or restrictions on copayments and deductibles imposed by §11.506(2)(A) and (B) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate);

(29) coverage of a minimum stay for maternity as required by Insurance Code §§1366.051 - 1366.059;

(30) coverage of reconstructive surgery incident to mastectomy as required by Insurance Code §§1357.001 - 1357.007;

(31) coverage of a minimum stay for mastectomy treatment/services as required by Insurance Code §§1357.051 - 1357.057; and

(32) coverage of autism spectrum disorder as required by the Insurance Code Chapter 1355, Subchapter A.

(b) A health benefit plan issued by an HMO through a health group cooperative must provide for the basic health care services as provided in §11.508 or §11.509 of this title (relating to Mandatory Benefit Standards: Group, Individual and Conversion Agreements and Additional Mandatory Benefit Standards, Group Agreement Only):

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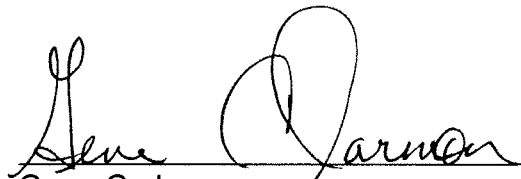
TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 26. Small Employer Health Insurance Regulations

Adopted Section
Page 7 of 8

(c) A health benefit plan offered by an insurer through a health group cooperative is not subject to §3.3704(a)(6) of this title (relating to Freedom of Choice: Availability of Preferred Providers).

CERTIFICATION. This agency hereby certifies that the adopted amendment has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 11, 2009.



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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendment to §26.409 specified herein, concerning the exclusion of state-mandated health benefits for autism spectrum disorder coverage in health benefit plans issued through health group cooperatives, is adopted.

AND IT IS SO ORDERED.

09-0762

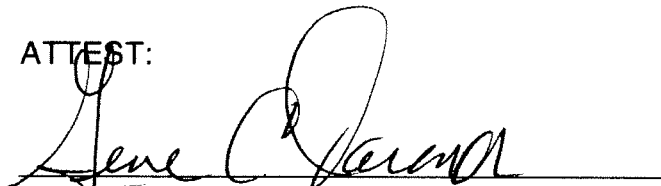
TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 26. Small Employer Health Insurance Regulations

Adopted Section
Page 8 of 8



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 09-0762