

Subchapter A. Definitions, Severability, and Small Employer Health Regulations
28 TAC §26.9

Subchapter C. Large Employer Health Insurance Regulations
28 TAC §26.305

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §26.9 and §26.305, concerning small employer and large employer health benefit plans. The amendments implement Senate Bill 896, 89th Legislature, 2025.

EXPLANATION. Proposed amendments to §26.9 and §26.305 are necessary to implement SB 896, which expands the coverage period for newborn children under small and large employer health plans subject to Insurance Code Chapter 1501. SB 896 extends the end date of the mandatory coverage period from the 32nd day to the 61st day after a child's birth, and extends the deadline for an enrollee to notify the health plan and pay any additional premium from the 31st day to the 60th day after the date of birth.

In separate proposals also published in this issue of the *Texas Register*, TDI proposes amendments to 28 TAC Chapters 3 and 11 to implement multiple bills, including SB 896.

Descriptions of the sections' proposed amendments follow.

Section 26.9. The proposed amendments to §26.9 implement SB 896. Subsection (a)(4) is amended by replacing the reference to newborn coverage termination on the 32nd day after birth with the 61st day after birth. and the subsection is also amended by replacing the references to a 31-day premium payment deadline with a 60-day payment deadline.

Section 26.305. The proposed amendments to §26.305 implement SB 896. Subsection (f) is amended by replacing the reference to newborn coverage termination on the 32nd day

after birth with the 61st day after birth. Subsection (f)(2) is amended by replacing the references to a 31-day premium payment deadline with a 60-day payment deadline. An amendment to subsection (h)(1) deletes "an" to correct a grammatical error.

The proposed amendments also include nonsubstantive editorial and formatting changes to conform the sections to TDI's current drafting style and plain language preferences and to improve the rule's clarity. These changes appear throughout the amended sections and include nonsubstantive text edits, including replacing the word "must" with "may," replacing the word "nonpayment" with "no payment," and corrections to punctuation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office in the Life and Health Division, 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 the 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 benefit of ensuring that TDI's rules conform to Insurance Code §1501.157 and §1501.607, as amended by SB 896.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code §1501.157 and §1501.607 because it does not impose requirements beyond those in statute. As a result, the cost associated with extending the coverage period for newborn children does not result from the enforcement or administration of the proposed amendments.

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. 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. Even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. The proposed rule implements Insurance Code §1501.157 and §1501.607, as amended by SB 896.

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 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 June 8, 2026. Consistent with Government Code §2001.024(a)(8), TDI requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. 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.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2864. This proposal will be part of a rule hearing docket that will begin at 10:00 a.m., central time, on June 1, 2026. TDI will hold the public hearing both remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701 in Room 2.034. Visit www.tdi.texas.gov/alert/event/index.html for more info on the proposed rule, hearing, and comment submission.

Subchapter A. Definitions, Severability, and Small Employer Health Regulations
28 TAC §26.9

STATUTORY AUTHORITY. TDI proposes amendments to §26.9 under Insurance Code §1501.010(1) and §36.001.

Insurance Code §1501.010(1) directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

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 26.9 implements Insurance Code §1501.157, as amended by SB 896.

TEXT.

§26.9. Exclusions, Limitations, Waiting Periods, Affiliation Periods, Preexisting Conditions, and Restrictive Riders.

(a) All health benefit plans that provide coverage for small employers and their employees must comply with the following requirements.

(1) A small employer carrier may not exclude any eligible employee or dependent (including a late enrollee who would otherwise be covered under a small employer health benefit plan), except to the extent permitted under Insurance Code §1501.156, [{}concerning Employee Enrollment; Waiting Period{}].

(2) A small employer carrier may not limit or exclude (by use of rider, amendment, or other provision of the plan, applicable to a specific individual) coverage by type of illness, treatment, medical condition, or accident, except for preexisting conditions or diseases or an affiliation period, as permitted under Insurance Code Chapter 1501, [{}concerning Health Insurance Portability and Availability Act{}].

(3) A preexisting condition provision in a small employer health benefit plan may not apply to expenses incurred on or after the expiration of the 12 months following the effective date of coverage of the enrollee or late enrollee, except as authorized by paragraph (9)(B) of this subsection.

(4) A small employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee. Any coverage of a newborn child of an employee under this subsection terminates on the 61st ~~[32nd]~~ day after the date of the birth of the child unless notification of the birth and any required additional premium are received by the small employer carrier not later than the 60th ~~[31st]~~ day after the date of birth. A small employer carrier may ~~[must]~~ not terminate coverage of a newborn child if the carrier's billing cycle does not coincide with this 60-day ~~[31-day]~~ premium payment requirement, until the next billing cycle has occurred and there has been no payment ~~[nonpayment]~~ of the additional required premium~~[,]~~ within 30 days of the due date of the premium.

(5) A small employer health benefit plan may not limit or exclude initial coverage of an adopted child of an insured. An adopted child of an insured may be enrolled, at the option of the insured, within either:

- (A) 31 days after the insured is a party in a suit for adoption; or
- (B) 31 days of the date the adoption is final.

(6) Coverage of an adopted child of an insured under paragraph (5) of this subsection terminates unless notification of the adoption and any required additional premium are received by the small employer carrier not later than either:

- (A) the 31st day after the insured becomes a party in a suit in which the adoption of the child by the insured is sought; or
- (B) the 31st day after the date of the adoption. A small employer carrier may not terminate coverage of an adopted child if the carrier's billing cycle does not coincide with this 31-day premium payment requirement, until the next billing cycle

has occurred and there has been nonpayment of the additional required premium, within 30 days of the due date of the premium.

(7) For purposes of paragraphs (4) and (6) of this subsection, "received by the small employer within a specified period" means that the item(s) must be either received or postmarked by the specified period.

(8) If a newborn or adopted child is enrolled in a health benefit plan or other creditable coverage within the periods specified in paragraph (4) or (5) of this subsection, and subsequently enrolls in another health benefit plan without a significant break in coverage, the other plan may not impose any preexisting condition exclusion or affiliation period with regard to the child. If a newborn or adopted child is not enrolled within the periods specified in paragraph (4) or (5) of this subsection, then in accordance with paragraph (9) of this subsection, the newborn or adopted child may be considered a late enrollee or excluded from coverage until the next open enrollment period.

(9) A small employer carrier must choose one of the methods set forth in subparagraph (A) or (B) of this paragraph for handling requests for enrollment as a late enrollee in any health benefit plan subject to this subchapter. The small employer carrier must use the same method for all small employer health benefit plans.

(A) The eligible employee or dependent may be excluded from coverage and any application for coverage rejected until the next annual open enrollment period and, once enrolled, may be subject to a 12-month preexisting condition provision or, in the case of an HMO, may be subject to a 60-day affiliation provision, as described by Insurance Code §§1501.102 - 1501.104, [concerning Preexisting Condition Provision; Treatment of Certain Conditions as Preexisting Prohibited; and Affiliation Period].

(B) The eligible employee or dependent's application may be accepted immediately and the employee or dependent enrolled as a late enrollee during the plan year. If so enrolled, the preexisting condition provision imposed for a late enrollee

may not exceed 18 months or, in the case of an HMO, the affiliation period may not exceed 90 days from the date of the late enrollee's application for coverage.

(C) The provisions of subparagraphs (A) and (B) of this paragraph do not apply to eligible employees or dependents under the special circumstances listed as exceptions under the definition of late enrollee in §26.4 of this title (relating to Definitions).

(D) Examples for applying subparagraphs (A) and (B) of this paragraph, in the case of both insurers and HMOs: Individual A requests coverage on October 1, 2014, after the enrollment period of July 1, 2014, through July 31, 2014, has ended. The next annual open enrollment period is July 1, 2015, through July 31, 2015. The effective date of coverage for persons enrolling during an open enrollment period is the beginning of the plan year, which is September 1 of each year.

(i) If the carrier is an insurer and has elected to exclude all applicants requesting late enrollment until the next open enrollment period, Individual A must reapply for coverage in July 2015 and the carrier may apply up to a 12-month preexisting condition period from the effective date of coverage, and as with any other enrollee, the preexisting condition period would begin on September 1, 2015, and expire on September 1, 2016.

(ii) If the carrier is an insurer and has elected to accept applications for late enrollment immediately and enroll the applicant during the plan year, the carrier may apply up to an 18-month preexisting condition period from the date of application. If Individual A applied for coverage on October 1, 2014, the preexisting condition period would begin on that date and expire on April 1, 2016.

(iii) If the carrier is an HMO and has elected to exclude all applicants requesting late enrollment until the next open enrollment period, Individual A must reapply for coverage in July 2015, and the carrier may apply up to a 60-day affiliation period, as with any other enrollee.

(iv) If the carrier is an HMO and has elected to accept applications for late enrollment immediately and enroll the applicant during the plan year, the carrier may apply up to a 90-day affiliation period from the day Individual A applied for coverage.

(10) A preexisting condition provision in a small employer health benefit plan may not apply to coverage for a disease or condition other than a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received from an individual licensed to provide the services under state law and operating within the scope of practice authorized by state law during the six months before the effective date of coverage.

(11) A small employer carrier may not treat genetic information as a preexisting condition described by Insurance Code §1501.002, [(concerning Definitions,)] in the absence of a diagnosis of the condition related to the information.

(12) A small employer carrier may not treat a pregnancy as a preexisting condition described in Insurance Code §1501.002.

(13) A preexisting condition provision in a small employer health benefit plan does not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect up to a date not more than 63 days before the effective date of coverage under the small employer health benefit plan, excluding any waiting period under the previous coverage. For example, Individual A has coverage under an individual policy for six months beginning on May 1, 2014, through October 31, 2014, followed by a gap in coverage of 61 days until December 31, 2014. Individual A is covered under an individual health plan beginning on January 1, 2015, for six months through June 30, 2015, followed by a gap in coverage of 62 days until August 31, 2015. Individual A's effective date of coverage under a small employer health benefit plan is September 1, 2015. Individual A has 12 months of creditable

coverage and would not be subject to a preexisting condition exclusion under the small employer health benefit plan.

(14) In determining whether a preexisting condition provision applies to an individual covered by a small employer health benefit plan, the small employer carrier must credit the time the individual was covered under creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under a small employer health benefit plan. Any waiting period that applied before that coverage became effective also must be credited against the preexisting condition provision period. For instance, Individual B is covered under an individual health insurance policy for 18 months beginning May 1, 2014, through November 30, 2015, followed by a four-month gap in coverage from December 1, 2015, to March 31, 2016. On April 1, 2016, Individual B is covered under a group health plan for three months through June 30, 2016, followed by a two-month gap in coverage until August 31, 2016. Individual B's coverage became effective on September 1, 2016. Under this example, since there was a significant break in coverage, to determine the length of creditable coverage, the small employer carrier counts the creditable coverage the individual had for the 12-month period preceding the effective date of the individual's coverage under the small employer health benefit plan. Individual B has creditable coverage of six months and the issuer of the small employer health benefit plan may impose a preexisting condition limitation for six months on Individual B.

(15) A small employer may establish a waiting period in accordance with Insurance Code §1501.156. On completion of the waiting period and enrollment within the time frame allowed by §26.7(h) of this title (relating to Requirement to Insure Entire Groups), coverage must be effective no later than the next premium due date. Coverage may be effective at an earlier date as agreed between the small employer and the small employer carrier.

(16) An HMO may impose an affiliation period in accordance with Insurance Code §1501.104, if the period is applied uniformly without regard to any health-status-related factor. The affiliation period may not exceed two months for an enrollee, other than a late enrollee, and may not exceed 90 days for a late enrollee. An affiliation period under a plan must run concurrently with any applicable waiting period under the plan. An HMO may not impose any preexisting condition limitation, except for an affiliation period.

(17) The imposition of an affiliation period by an HMO does not preclude application of any applicable waiting period as determined by the employer for all new entrants under a health benefit plan.

(18) An affiliation period provision in a small employer health benefit plan does not apply to an individual who would not be subject to a preexisting condition limitation in accordance with paragraphs (12) and (13) of this subsection.

(b) To determine if preexisting conditions exist, a small employer carrier must ascertain the source of previous or existing coverage of each eligible employee or dependent at the time the employee or dependent initially enrolls into the health benefit plan provided by the small employer carrier. The small employer carrier has the responsibility to contact the source of the previous or existing coverage to resolve any questions about the benefits or limitations related to that coverage in the absence of a creditable coverage certification form.

Subchapter C. Large Employer Health Insurance Regulations **28 TAC §26.305 Enrollment**

STATUTORY AUTHORITY. TDI proposes amendments to §26.305 under Insurance Code §1501.010(1) and §36.001.

Insurance Code §1501.010(1) directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

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 26.305 implements Insurance Code §1501.607, as amended by SB 896.

TEXT.

§26.305. Enrollment.

(a) Periods provided for enrollment in and application for any health benefit plan provided to a large employer group must comply with the following.^[:]

(1) The ~~the~~ initial enrollment period for the employees meeting the large employer's participation criteria must extend at least 31 consecutive days after the employee's initial date of employment, or, if the waiting period exceeds 31 days, at least 31 consecutive days after the date the new entrant completes the waiting period for coverage.^[:]

(2) The ~~the~~ new entrant who meets the large employer's participation criteria must be notified of his or her opportunity to enroll at least 31 days in advance of the last date enrollment is permitted.^[:]

(3) A ~~a~~ new entrant's application for coverage is timely if he or she submits the application within 31 consecutive days following the initial date of employment, or following the date the new entrant is eligible for coverage:

(A) in person;

(B) by mail, postmarked by the end of the specified period; or

(C) in an alternative method normally accepted by the large employer carrier, including facsimile transmission (fax), email, or web-based application.^[;-and]

(4) The ~~the~~ large employer carrier must provide an annual open enrollment period of at least 31 consecutive days.

(b) If dependent coverage is offered to enrollees under a large employer health benefit plan, the initial enrollment period for the dependents must be at least 31 consecutive days, with a 31-consecutive-day annual open enrollment period.

(c) A new employee who meets the participation criteria of a covered large employer may not be denied coverage if the application for coverage is received by the large employer carrier not later than the 31st day after the later of:

(1) the date on which the employment begins; or

(2) the date on which the waiting period established under Insurance Code §1501.606, [concerning Employee Enrollment; Waiting Period,] expires.

(d) If dependent coverage is offered to the enrollees under a large employer health benefit plan, a dependent of a new employee who meets the participation criteria established by the large employer may not be denied coverage if the application for coverage is received by the large employer carrier not later than the 31st day after the later of:

(1) the date on which the employment begins;

(2) the date on which the waiting period established under Insurance Code §1501.606 expires; or

(3) the date on which the dependent becomes eligible for enrollment.

(e) A large employer carrier may not exclude any eligible employee who meets the participation criteria or an eligible dependent, including a late enrollee, who would otherwise be covered under a large employer group.

(f) A large employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee. Any coverage of a newborn child of an insured under this subsection terminates on the 61st ~~32nd~~ day after the date of the birth of the child unless:

(1) dependent children are eligible for coverage under the large employer health benefit plan; and

(2) notification of the birth and any required additional premium are received by the large employer not later than the 60th [~~31st~~] day after the date of birth. A large employer carrier may not terminate coverage of a newborn child if the carrier's billing cycle does not coincide with this 60-day [~~31-day~~] premium payment requirement, until the next billing cycle has occurred and there has been no payment [~~nonpayment~~] of the additional required premium^[7] within 30 days of the due date of the premium.

(g) If dependent children are eligible for coverage under the large employer health benefit plan, a large employer health benefit plan may not limit or exclude initial coverage of an adopted child of an insured.

(h) If dependent children are eligible for coverage under the large employer health benefit plan, an adopted child of an insured may be enrolled, at the option of the insured, within either:

- (1) 31 days after the [~~an~~] insured is a party in a suit for adoption; or
- (2) 31 days of the date the adoption is final.

(i) Coverage of an adopted child of an employee terminates unless notification of the adoption and any required additional premiums are received by the large employer not later than either:

(1) the 31st day after the insured becomes a party in a suit in which the adoption of the child by the insured is sought; or

(2) the 31st day after the date of the adoption. A large employer carrier may not terminate coverage of an adopted child if the carrier's billing cycle does not coincide with this 31-day premium payment requirement, until the next billing cycle has occurred and there has been nonpayment of the additional required premium within 30 days of the date of the premium.

(j) For purposes of this section, "received by the large employer" within a specified period means that the item(s) must be postmarked by the specified period.

(k) If a newborn or adopted child is enrolled in a health benefit plan or other creditable coverage within the periods specified in this section, and subsequently enrolls in another health benefit plan without a significant break in coverage, the other plan may not impose any preexisting condition exclusion with regard to the child. If a newborn or adopted child is not enrolled within the periods specified in this section, then in accordance with §26.306(h) of this title (relating to Exclusions, Limitations, Waiting Periods, Affiliation Periods, Preexisting Conditions, and Restrictive Riders), the newborn or adopted child may be considered a late enrollee or excluded from coverage until the next open enrollment period.

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 April 27, 2026.

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