SENATE INTERIM COMMITTEE
ON ECONOMIC DEVELOPMENT

Report on Telecommunications and Insurance

76th Legislature

October 1998

EXECUTIVE SUMMARY

I. Interim Charge on Senate Bill 1499, 75th Legislature:
"Study the effect of property insurance form deregulation, as addressed in SB 1499, passed by the Legislature during the 1997 regular session, on the affordability and availability of homeowners insurance."

Summary

The 75th Legislature passed Senate Bill 1499 in an effort to give property insurers more flexibility in tailoring policies to meet the needs of Texas property owners yet still protect consumer interests. The intent was to allow insurers to use national policy forms and endorsements, in addition to "Texas only" forms, and to improve the availability and affordability problems existing in some areas of the Texas property insurance market. Faced with having to develop a separate form to do business in Texas, many insurers selling homeowners insurance in other states were reluctant to invest in the Texas only forms system. Other insurers argued the system was costly and unnecessary, and ultimately resulted in increased costs for consumers. Also, the inability to restrict coverage for certain perils, such as wind and hail damage and foundation problems, made it difficult for consumers in certain areas of the state, such as Nueces, Dallas and Tarrant counties, to secure insurance coverage for their homes. The only affordable option to many consumers was to purchase an approved policy with minimal coverage instead of being able to only restrict coverage on certain perils.

Senate Bill 1499 changed the way Texas regulates property insurance forms. Specifically, the bill made two significant changes in the method homeowners insurance policy forms are regulated. The bill allows insurers selling homeowners insurance to: (1) use Policy Forms and Endorsements of National Insurers and Insurance Organizations, if approved or adopted by the

commissioner, and (2) file restrictive endorsements to the current Texas homeowners and dwelling programs (prior law only allowed the filing of enhancing endorsements). SB 1499 also transferred the regulation of farm and ranch insurance from regulation as personal lines insurance to regulation under commercial lines, and eliminated the equivalent coverage requirement for commercial insurance forms.

Findings

Although the change in law allowing the filing and approval of restrictive endorsements has shown some signs of beginning to improve homeowners insurance availability in certain areas of the state, not enough time has elapsed to accurately assess any long term impact on the homeowners market. Similarly, no new homeowners policy forms have been approved or adopted by the Commissioner of Insurance. Therefore, no data exists by which to assess the impact of property form deregulation under SB 1499 on the availability or affordability of homeowners insurance.

In addition, two national insurance organizations and two national insurers have filed new homeowners programs for approval by the commissioner, which are expected to be approved for use sometime in early 1999. The Committee does not recommend any statutory changes at this time. However, the expected introduction of new policy forms into the Texas homeowners insurance market should be monitored.

II. Interim Charge on Senate Bill 386, 75th Legislature:

"Monitor the implementation of SB 386, passed by the Legislature during the 1997 regular session, regarding managed care liability, including the development of the rules and standards governing the certification, selection, and operation of independent review organizations."

Summary

Senate Bill 386 amended the Texas Civil Practice and Remedies Code to allow patients to hold their managed care company liable for making negligent health care decisions. Additionally, the bill created an independent review process for denials of appeals of "adverse determinations" made by a managed care plan. An Independent Review Organization (IRO) reviews decisions where a managed care company deems that health care services are not "medically necessary" or "appropriate."

Several events regarding SB 386 have occurred since its passage. More than 250 cases have been reviewed since the Commissioner of Insurance adopted rules governing the implementation of the independent review process last November. TDI data indicates that approximately 50 percent of the cases reviewed have resulted in an overturn of the managed care decision. By most measures, the independent review system has been successful and has increased the access to better quality health care for Texans.

Additionally, a federal lawsuit filed by Aetna U.S. Healthcare challenging SB 386 was decided in September 1998. In its opinion, the court upheld the right of injured patients to sue their managed care plans for damages. However, the court also held that the IRO provisions improperly mandated the administration of employee benefits and, as such, were preempted as applied to federally regulated employer plans. The judge did not, however, issue any injunction enjoining the state from enforcing the independent review process.

Findings

Currently, the Committee is not aware of any lawsuits filed under SB 386. Accordingly, the Committee knows of no evidence of any problems related to the implementation of the liability provisions. Therefore, no changes to the liability provisions are recommended.

The Aetna lawsuit is likely to be appealed to the Fifth Circuit. Until any appeals are final, the fate of the independent review process is unknown. Since the independent review system is highly successful, it is recommended that the Legislature continue to monitor this situation to determine if legislation may be required at some future date.

III. Supplemental Interim Charge on Public Disclosure of Insurance Data:
"1. Review the process used by the Texas Department of Insurance and the Attorney General in making determinations regarding public disclosure of insurance data and, if necessary, make recommendations to streamline and standardize the process. 2. Review and make recommendations, if needed, to clarify what insurance market-related data should be in the public domain and what information should be considered proprietary data to preserve competition. This review should consider both statistical data and underwriting guidelines."

Summary

This supplemental charge concerns the general issue of whether, or to what extent, certain statistical data and underwriting information submitted to the Texas Department of Insurance (TDI) by insurers should be kept confidential. Specifically, the Committee focused on a recent lawsuit against TDI and the Attorney General of Texas (AG) by insurers to block the release of ZIP code specific insurance data, known as Quarterly Market Reports (QMR), that insurance companies claimed was confidential as "trade secrets," or commercial or financial information privileged from disclosure under the Open Records Act. The insurers later claimed the data also constituted information relating to the regulation of financial institutions, and was excepted from the disclosure requirements of the Open Records Act. The legal determination of whether a company's information is protected from disclosure is dependent upon fact-specific evidence related to the extent to which the company took

steps to keep such evidence secret. Consumer groups seeking this insurance data from TDI want to review the information to determine whether insurance companies are refusing to sell insurance in certain areas of the state or to certain groups of people, otherwise known as *redlining*.

In July 1998, the lawsuit over the release of QMR data was decided in favor of the insurers. The court found that the data constituted information relating to regulation of a financial institution under the Open Records Act and was excepted from disclosure. The court enjoined TDI and the AG from releasing QMR data publically, unless such data is in summary form not identifying specific companies. However, the judgment does specifically allow for the release of QMR data to individual members, agencies or committees of the Legislature for legislative purposes, provided the member requesting the QMR data signs a confidentiality agreement before receiving any information. One such confidentiality agreement has been received by TDI from a legislator, but the data has not yet been released. It is expected that the QMR lawsuit will be appealed.

Currently, TDI is pursuing investigations of seven companies selling insurance in Texas to determine if the insurers are illegally denying coverage because of a person's race, ethnicity or place of residence. In September 1998, as a result of one of these investigations, TDI attorneys recommended to Commissioner Elton Bomer that a major national insurance company be fined $10 million for illegally discriminating against minorities in the sale of homeowners and automobile insurance. The company has denied the allegations. According to the TDI official, the marketing practices of this insurer steered agents away from ZIP code areas consisting mostly of racial minorities.

Findings

Due to the fact-specific nature of the legal determination of whether

insurance data is confidential under the Open Records Act, a case-by-case determination appears to be the best way to handle these type of public information requests. Additionally, it is unclear how further appeal of the litigation involving ZIP code specific insurance data will be resolved.

TDI is aggressively pursuing redlining investigations of several Texas insurers. A record $10 million fine has already been recommended for one of these companies. These investigations are ongoing, and the Legislature should continue to monitor TDI's efforts in this area. The Committee recommends no legislative changes at this time.

IV. Interim Charge on House Bill 2128, 74th Legislature: *"Study and assess the effectiveness of HB 2128, passed by the Legislature during the 1995 regular session, including but not limited to: the deployment of an advanced telecommunications infrastructure in Texas, the development of competition in the local telecommunications market in Texas; and the use of the Telecommunications Infrastructure Fund in improving the capabilities of Texas schools, libraries and public hospitals. In its evaluation, the Committee should identify any remaining barriers to the development of full competition in the telecommunications market in Texas and make recommendations, if necessary, for any legislative or regulatory action."*

Summary

HB 2128, 74th Legislature was enacted on September 1, 1995, as the Public Utility Regulatory Act of 1995 (PURA 95). The goals of the Act can be summarized into three areas: allow for a competitive telecommunications market, encourage investment in the state and provide a world class telecommunications infrastructure in Texas.

The Public Utility Commission (PUC) has been very active over the past two years. It has translated requisite provisions of PURA 95 into rule, certified nearly 200 companies to provide local phone service, and arbitrated disagreements between companies on several critical issues. By most accounts, competition at the local level is steadily increasing. However, the transition to competition has been a very tedious and technical process. One of the major sticking points in the fight to open the telecommunications market has been the development of computer systems required to flow through orders between incumbent local exchange carriers and competitive local exchange carriers (CLECs). These systems, known as Operations Support Systems (OSS) are very complex and have been a major hurdle for all parties involved. The PUC has handled this difficult issue very well, and current time lines forecast that one CLEC's OSS will be capable of handling live commercial orders by October 15, 1998. Estimates on when a CLEC will have its OSS fully operational and able to handle orders of a commercial volume range from first quarter of 1999 to mid summer 1999.

Texas has benefitted from the deployment of advanced infrastructure mandated by PURA 95. Required upgrades to the current telecommunications network are well on the way to completion. Companies that elected into alternative regulation under chapters 58 and 59 of PURA are required to provide access to digital services, install digital switching and connect central switching offices with fiber optics. In most cases, the companies are projecting that these obligations will be completed ahead of schedule.

In an effort to encourage new investment in the telecommunications infrastructure in Texas, HB 2128 also required certain certificated competitors to build-out new facilities. Conflicts with this requirement arose after the passage of the Federal Telecommunications Act (FTA) of 1996. In September 1997, the Federal Communications Commission (FCC) ruled three

provisions of HB 2128 are pre-empted by the FTA. Among the three pre-empted provisions is the 27-mile build-out requirement for holders of a Certificate of Operating Authority. The FCC also ruled that restrictions prohibiting competitors from entering markets with 31,000 access lines or less, and a 1994 PUC decision approving certain restrictions on the resale of Southwestern Bell centrex services are pre-empted by the FTA

The Telecommunications Infrastructure Fund (TIF) Board has been very active in fulfilling its objective to grant funds to public schools, libraries and not-for-profit hospitals for the purchase of computer equipment. TIF collections from telecommunications providers through the end of June 1998 equal $348,612,681.18. The TIF Board has granted or has grants in progress that total over $230 million. Entities that have received grants include 776 school districts, 158 public libraries and 57 community colleges.

Findings

The Committee is unable to identify any statutory barriers to the development of competition in the Texas telecommunications market. Upon completion of its study, the Committee deems that the PUC has all the tools required to develop and implement the goals of HB 2128, 74th Legislature. It is recommended that the Legislature monitor the development of Operations Support Systems in an effort to encourage competition. However, the Committee does not make any recommendations for legislative action at this time.