



Texas Department of Insurance

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RO-665

February 10, 1994

Honorable Dan Morales
Attorney General
William Clements State Office Building
Austin, TX 78701

FEB 16 94

FILE #

ML-24638-94

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I.D.#

Re: Request for an opinion construing Tex. Insurance Code art. 1.24D

Dear General Morales:

The Texas Department of Insurance requests your opinion construing Tex. Insurance Code art. 1.24D. That article permits the Department to request underwriting guidelines for insurers and requires the Department to keep those guidelines confidential. The Department intends to publish a pamphlet entitled *Health Insurance for Texans with Pre-Existing Conditions*, but seeks your opinion as to whether disclosure of the information contained in that pamphlet would violate art. 1.24D.

This pamphlet is a list of companies who responded to a Department survey asking whether they would consider offering individual health policies to consumers with pre-existing conditions. The publication lists whether "some" or "all" conditions are considered, dependents considered and methods by which coverage may be limited. A copy is attached for your review. This document is a critical resource for consumers who are unable to obtain health insurance due to pre-existing conditions. As noted in the pamphlet, all companies listed in the document agreed to be listed as companies willing to consider consumers with pre-existing conditions.

Tex. Ins. Code provides:

The department or the office of public insurance counsel may request and receive copies of an insurer's underwriting guidelines. Underwriting guidelines are confidential and the department or the office of public insurance counsel may not make the guidelines available to the public, provided, however, that the department or the office of public insurance counsel may disclose a summary of the underwriting guidelines in a manner that does not directly or indirectly identify the insurer who provided the guidelines.

Several issues arise from this statute.

First, does the second sentence, which makes underwriting guidelines confidential, apply to all underwriting guidelines in TDI's possession or only those we obtained through a request under article 1.24D? The Department obtains individual insurer underwriting guidelines from many sources. Some companies file their guidelines voluntarily without a request and do not request confidentiality. Others disclose underwriting guidelines to consumers as reasons for denial of coverage and consumers bring those "guidelines" to the Department's attention. We believe the confidentiality requirement only applies to underwriting guidelines obtained under art. 1.24D or those provided by the company to the Department and for which the company claims confidentiality.

Second, what is an "underwriting guideline" for purposes of this statute? Is this the official company listing of *all* factors it uses to underwrite a risk or does it refer to each separate underwriting factor? Please note that individual factors are required by statute to be disclosed to consumers upon request when they are denied insurance. *See, e.g., Tex. Ins. Code art. 21.49-2b § 9.* We believe the legislature was referring to disclosure of the entire set of underwriting guidelines rather than individual guidelines. Therefore disclosure of a single underwriting guideline, such as whether a health insurer is willing to insure consumers with pre-existing conditions, is not prohibited.

In summary, we believe the confidentiality requirement applies only to the complete set of company underwriting guidelines obtained through a request under Tex. Ins. Code art. 1.24D or a complete set provided by the company to the Department and for which the company claims confidentiality. We respectfully request your opinion as to whether our interpretation is correct and whether art. 1.24D prohibits the Department from distributing *Health Insurance for Texans with Pre-Existing Conditions*.

We also respectfully request that you give this matter an expedited review. The Department does not intend to release this publication until receipt of your opinion that distribution would not be in violation of art. 1.24D. Because the document contains essential information for hundreds of thousands of Texans to obtain health insurance, we would like to distribute the information as soon as possible.

Thank you for your prompt attention to this request.

Sincerely,



Mary F. Keller
Senior Associate Commissioner
Legal and Compliance

JRH/DJP