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OPINION COMMITTEE

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Office of the Attorney General
Opinions Committee
Attn: Susan Gusky
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-42827-02
I.D. # 42827

Dear Ms. Gusky,

I am the District Attorney for Gregg County in which the City of Longview, Texas lies. Pursuant to TEX. GOV'T CODE ANN. §402-041-.045; I respectfully request an Attorney General opinion in the following regard:

- 1) whether the Texas Insurance Code's "mental health parity" requirements apply to the City of Longview's Chapter 172 risk pool;
- 2) to what extent the City may be bound by state prohibitions against treating pregnancy as a pre-existing condition; and,
- 3) whether the City may charge participants for childhood immunizations provided by an unapproved provider.

The City of Longview's employee health benefits program was created under Chapter 172 of the Local Government Code. As a Chapter 172 risk pool, Longview is ostensibly exempted from all insurance regulations. See LOCAL GOV'T CODE ANN. 171.014. The City, however, is self-insured up to \$100,000.00 per participant; thereafter, excess coverage, also called "stop-gap" coverage, triggers. It is our understanding that the excess insurance coverage is not treated or examined as healthcare coverage by the Texas Department of Insurance.

If, however, the excess coverage were primary coverage (if the city was not self-insured), the City would be subject to all the provisions of the Insurance Code. As far as we can tell, an arrangement with partial self-insured and partial excess coverage is not addressed by the Insurance Code. In other words, because the City carries excess

coverage, we are concerned that it may be subject to the argument that provisions of the Insurance Code apply. This position seems contrary to the explicit language of Chapter 172.014 and requires a stilted construction.

With respect to the aforementioned three queries, we are more specifically concerned **first**, whether section 3.51-14 of the Insurance Code applies to our risk pool, therefore making the City subject to the “serious mental illness” requirements therein.¹

Your conclusion in this regard will dovetail into our **second question**, regarding pregnancy as a pre-existing condition.² Section 26.90(d) of the Insurance Code prohibits “large employers” from treating pregnancy as a pre-existing condition. “Large employer” is defined by section 26.02(15), to include entities subject to §3.51-14. In sum, if Longview is not subject to the serious mental illness provisions of §3.51-14, then it may treat pregnancy as a pre-existing condition, we believe.

Finally, it appears as though the City of Longview must comply with the immunization requirements of §21.53F of the Insurance Code. We do not believe, however, that Longview is prohibited from charging a co-pay, a deductible or altogether excluding immunizations provided by physicians outside the applicable PPO. Section 21.53F requires that a health benefit plan that provides benefits for a family member of

¹ Art. 3.51-14. Coverage for Certain Serious Mental Illnesses

Sec. 1. For purposes of this article:

(1) “Serious mental illness” means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM):

- (A) schizophrenia;
- (B) paranoid and other psychotic disorders;
- (C) bipolar disorders (hypomanic, manic, depressive, and mixed);
- (D) major depressive disorders (single episode or recurrent);
- (E) schizo-affective disorders (bipolar or depressive);
- (F) pervasive developmental disorders;
- (G) obsessive-compulsive disorders; and
- (H) depression in childhood and adolescence.

Sec. 3. (a) Except as provided by Section 4 of this article, a group health benefit plan:

(1) must provide coverage, based on medical necessity, for the following treatment of serious mental illness in each calendar year:

- (A) 45 days of inpatient treatment; and
 - (B) 60 visits for outpatient treatment, including group and individual outpatient treatment;
- (2) may not include a lifetime limit on the number of days of inpatient treatment or the number of outpatient visits covered under the plan; and
- (3) must include the same amount limits, deductibles, copayments, and coinsurance factors for serious mental illness as for physical illness.

(b) An issuer of a group health benefit plan may not count toward the number of outpatient visits required to be covered under Subsection (a)(1) of this section an outpatient visit for the purpose of medication management and must cover that outpatient visit under the same terms and conditions as it covers outpatient visits for treatment of physical illness.

(c) An issuer of a group health benefit plan may provide or offer coverage required under this section through a managed care plan.

² Art. 26.90. Preexisting Condition Provisions

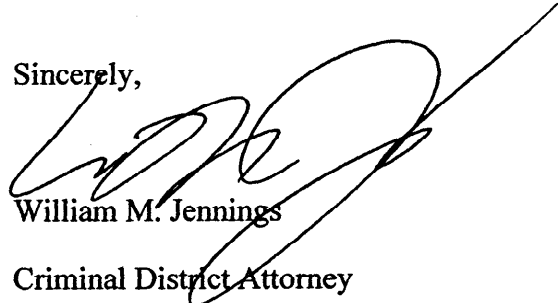
(d) A large employer carrier shall not treat a pregnancy as a preexisting condition described by Subsection (b) of this article.

the insured provide coverage for each covered child from birth through the date the child is six years of age, for immunization against: diphtheria, haemophilus influenzae type b, hepatitis B, measles, mumps, pertussis, polio, rubella, tetanus and varicella. While this section adds that "benefits required . . . may not be made subject to a deductible, copayment, or coinsurance requirement," we interpret this language to prohibit deductibles, co-pays, etc. only within the applicable PPO. In other words, our **third question** concerns whether Longview may charge or assess a deductible for immunization provided outside the PPO.

Significantly, §21.53F provides, in part: "Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code." The inclusion of this language bolsters our arguments above. In other words, our Legislature knew exactly what language to include in statutory provisions of the Insurance Code to bring Chapter 172 risk pools within the requirements of the applicable law. Our Legislature included this language in the immunization statute, but omitted it from sections 3.51-14 and 21.90(d), regarding serious mental illness and pregnancy as a pre-existing condition.

I hope that we have adequately briefed and outlined our questions. I appreciate your time, and look forward to your opinion regarding these matters.

Sincerely,



William M. Jennings

Criminal District Attorney

Gregg County, Texas

cc: Jim Finley, City Attorney