

**OFFICE OF PUBLIC INSURANCE COUNSEL'S RESPONSE  
TO SUNSET ADVISORY COMMISSION STAFF REPORT**

The primary function of the Office of Public Insurance Counsel is to advocate on behalf of Texas insurance consumers. The Office of Public Insurance Counsel could more effectively represent consumers' interests with some revision to current law.

***Specific Issues from Sunset Staff Report***

*Sunset Staff Report (Page 47): The State has a continuing need for the Office of Public Insurance Counsel.*

**Agency Response:** The Office of Public Insurance Counsel (OPIC) agrees. OPIC would also respectfully request that the legislature consider other statutory changes in order to increase OPIC's effectiveness.

First and foremost, OPIC's ability to obtain a hearing to address excessive rate filings could be strengthened. When the legislature changed the rating structure in the 78th Legislative session (SB 14), the new procedure omitted OPIC's *right* to a hearing on a filing. Presently, OPIC may *request* a hearing by petition to the Commissioner that he may grant at his discretion. However, if the OPIC rate hearing petition is granted under the statute as presently written, the hearing must be held within 30 days of the petition filing date. *See* TEX. INS. CODE ANN. Section 2251.105 (b). This deadline is problematic for a number of reasons. First, it does not allow adequate time for the parties to prepare and properly present a case. Rate hearings are complex and time consuming. Expert testimony from actuaries must be presented for the adjudicator to render a proper decision. Without the proper time to prepare, there is a greater likelihood of legal error that can serve as the basis for a lengthy appeal. Secondly, the 30 day hearing requirement would not likely withstand a legal due process challenge. If the Commissioner or the filing insurer requests a hearing, no such time limit exists. Therefore, in order to avoid these procedural pitfalls, OPIC must rely on TDI to set a hearing under TDI's statute.

To resolve issues, the legislature could:

- Add language allowing OPIC the right to a hearing, including the right to obtain policyholder refunds, which such refunds would begin to accrue upon the date OPIC files its initial pleading in the matter; and
- Removing the 30-day hearing deadline.

These changes would strengthen and improve the regulatory process. It is unlikely that these changes would increase the number of hearings actually held since previous experience indicates that most rate disputes are resolved without a hearing.

With respect to the Sunset recommendation that OPIC develop a policy regarding alternative dispute resolution (Page 47), OPIC concurs with this recommendation as well.

***Other Issues/Considerations***

As we are all aware, the Patient Protection and Affordable Care Act of 2010 was recently signed into law. It is unclear at the present if OPIC will be assigned any new duties as a result of this new law. If so, statutory revision will likely be necessary.