

*Office of Public Insurance Counsel
Report to the 86th Texas Legislature*



Recommendations Report | January 2019



OFFICE OF PUBLIC INSURANCE COUNSEL

Melissa R. Hamilton, Public Counsel

January 22, 2019

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dennis Bonnen, Speaker of the House
The Honorable Members of the 86th Texas Legislature

Dear Governors, Speaker, and Honorable Members of the 86th Texas Legislature:

In accordance with the Texas Insurance Code, Section 501.155, I am pleased to submit the recommendations report for the Office of Public Insurance Counsel (OPIC).

Texas law allows OPIC's public counsel to "recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers." Texas Insurance Code, Section 501.155. The three recommendations contained in this report follow that statutory directive and are presented for your consideration.

Thank you for the opportunity to provide this report and information. Please contact me at (512) 322-4144 or mhamilton@opic.texas.gov, if you have any questions or would like additional information.

Sincerely,

Melissa R. Hamilton
Public Counsel



Introduction

The Texas Legislature established the Office of Public Insurance Counsel (OPIC) in 1991 and codified the agency's duties in Chapter 501 of the Texas Insurance Code. OPIC represents the interests of Texas consumers in insurance matters. OPIC fulfills its statutory duties through action on regulatory matters, consumer education and outreach, and serving as a resource for the Texas Legislature.

OPIC's Duties

Regulatory Matters. OPIC represents the interests of consumers before the Texas Department of Insurance (TDI) on regulatory matters relating to insurance rates, rules, and policy forms. OPIC makes formal comments and objections to TDI on these matters, and when prudent, can intervene as a party in rate hearings before the Commissioner of Insurance and the State Office of Administrative Hearings. OPIC also engages with TDI and stakeholders directly through informal dialogue to achieve positive results for Texas consumers on rates, rules, and policy forms.

Consumer Education and Outreach. One of OPIC's most important duties is consumer education and outreach. OPIC submits to TDI for adoption a consumer bill of rights that advises consumers of their rights under Texas law.¹ The agency is also required to develop an annual consumer report card on the quality of care, and consumer satisfaction with, Health Maintenance Organizations (HMOs) in Texas.² In addition, OPIC creates informational postcards, brochures, and other print materials each year to assist consumers.

While print materials are important, OPIC primarily uses its website and social media applications – Facebook and Twitter – to increase consumer education and outreach. OPIC created an online policy comparison tool that helps consumers compare policies and coverage when shopping for property or auto insurance. OPIC has also recently completed a major update to its website and social media, both in form and content.

Additionally, OPIC's subject matter experts provide direct consumer assistance over the phone and via email on a daily basis.

Legislative Resource. OPIC fulfills its statutory duties by providing resource testimony and information to the Texas Legislature on insurance issues throughout both the legislative session and interim.

2018 Highlights

Consumer Savings. In 2018, OPIC reviewed, analyzed, and engaged on approximately 1,500 filings and rules. These efforts saved Texas insurance consumers approximately \$2 million.

Plain Language. OPIC has made comprehensive efforts to replace technical and legal terminology with plain language in its written materials, online information, and other communications with consumers.

Website Upgrade. OPIC staff completed a major update to the agency's website and social media. Among other upgrades, OPIC's website is now compatible with mobile devices and has a more consumer friendly web design. The policy comparison tool has also been enhanced to allow consumers to filter policy coverages.

¹ Insurance Code Section 501.156.

² Insurance Code Sections 501.251 and 252.

Post-disaster Communications. OPIC developed post-disaster informational postcards to assist Texans suffering losses after the extensive flooding experienced in the state in 2018.

Agent Feedback. OPIC created an online agent comment portal to receive feedback from agents on the insurance market in Texas and how it is impacting consumers.

Shopping Guides. OPIC developed shopping guides and printable checklists of questions for consumers to ask when shopping for homeowners, auto, or health insurance.

Legislative Recommendations

In accordance with its statutory authority under Chapter 501, Insurance Code, OPIC produces this report to recommend legislation to the Texas Legislature that would positively affect the interests of insurance consumers.³ This report contains three recommendations: (1) require applications for residential property policies to provide notice if flood coverage is not contained in the policy; (2) require the declarations page of a personal automobile insurance policy to contain a list of all deductibles within the policy and the dollar amount of each deductible; and (3) allow consumers to receive certain information about their health insurance via email or text message.

³ Insurance Code Section 501.155.

Recommendation 1

Require flood disclosure

In recent years, the number of floods in Texas has increased. Property losses also show that more Texans are being affected by flooding than in previous years. As a result, flood insurance has become a critical coverage for more Texas homes and residences. Many consumers, however, are unaware that their typical residential property policy does not include flood coverage. Flood insurance is usually optional for mortgaged homeowners in what are considered low or moderate flood risk areas.

Hurricane Harvey and other recent weather-related events have also illustrated that the existing flood zones and flood maps are no longer completely reliable. Many consumers do not know they need flood insurance unless their bank or lender requires them to purchase it. Often, however, the lenders rely, at least in part, on existing flood maps to make the determination about whether the homeowner needs flood insurance. The result is thousands of Texans unknowingly have flood exposure but no coverage. Since most insurance companies do not include flood coverage in their homeowners or renters policies, the coverage must be purchased separately, typically through the National Flood Insurance Program (NFIP). Without flood insurance coverage, a person who suffers flood damage is usually left to rely on the Federal Emergency Management Agency (FEMA) or assistance from agencies, churches, and non-profit organizations. They have little else to help them recover.

Issue

More Texans need flood coverage. Increasing consumer awareness could help consumers make more informed decisions about their residential property policies and recover faster after flooding. If insurers make consumers aware of flood insurance coverage when consumers apply for insurance on their home or rental property, consumers will be aware that they are not covered for damage from flooding. This warning could encourage consumers to consider whether they need flood insurance, and if so, purchase flood coverage while they are also purchasing their homeowners or renters policy.

Other stakeholders and agencies have suggested reminding consumers that their policy does not include flood coverage after their policy has been purchased. For example, some have suggested including a flood disclosure on the declarations page of the policy. Reminding consumers again, after purchase, that their policy does not include flood coverage is also helpful and works in conjunction with the recommendation listed below for your consideration.

Recommendation

Amend Subchapter C, Chapter 2002, Insurance Code to require any insurer engaged in the business of residential property insurance in Texas to provide a disclosure on the application for insurance if the policy for which the consumer is applying does not include flood coverage. The disclosure should be prominent and made in plain language. OPIC recommends allowing TDI to make decisions about the form and content of the disclosure with input from stakeholders through the rulemaking process.

Recommendation 2

Extend declarations page requirement to personal automobile policies

In 2013, the Texas Legislature passed Senate Bill 112 (83R).¹ The bill required residential property policies to include each type of deductible and the dollar amount of that deductible on the declarations page.² It did not apply to personal automobile policies.

The current law is a helpful consumer protection for homeowners and renters. Consumers, however, are often faced with the problem of varying, unknown, or hidden deductibles in their automobile policies as well. While deductibles on personal automobile policies are often a set dollar amount, that is not always the case. There are companies that:

- double or increase the deductible depending upon who is driving.
- double or increase the deductible when an accident occurs within a certain time period after the policy begins.
- offer “vanishing or diminishing deductibles” that lower the deductible by applying credits over time if there have been no chargeable losses.

Issue

There is no requirement that personal automobile policies include each type of deductible and the dollar amount of that deductible on the declarations page. Currently, companies vary in how they provide this information to the consumer. Some companies only include the information in the policy language itself, and the policy is often a long document of technical and legal terminology. Some companies also include the information on the declarations page, application, or a disclosure; and others add an endorsement to the policy.

Requiring insurers to clearly identify each type of deductible and the amount of that deductible on the declarations page of a personal automobile policy will help provide consumers with the information they need to make informed decisions about how to use their automobile insurance. The notice will help ensure consumers can more easily identify what circumstances will change their deductible and by how much. Accordingly, the notice will help consumers financially prepare for potential deductibles.

Recommendation

Amend Insurance Code, Section 2301.056 to require that a personal automobile insurance policy form include a declarations page that lists each type of deductible under the policy and its exact dollar amount. If a personal automobile insurance policy contains a provision that could change the dollar amount of a deductible, either the declarations page or a written disclosure would be required to clearly identify the applicable policy provision or endorsement and explain how any change in the deductible would be determined.

¹ The bill is codified in Insurance Code Section 2301.056 and requires: i) the exact dollar amount of each deductible under the policy; ii) list and identify each type of deductible under the residential property policy, and iii) for any policy provision or endorsement that may cause the exact dollar amount of a deductible to change, identify and explain how any change in the applicable deductible amount is determined.

² A declarations page, often referred to as the “dec page,” is the page in a policy that shows the name and address of the policyholder and insurer, the period of time the policy is in force, the amount of the premium, and the major policy limits and coverages.

Recommendation 3

Provide consumers new options for receiving health plan notices

Health plan consumers must be notified when certain events occur that affect their health plan's operations, network, health care providers, or drug formularies. More specifically, consumers must be notified of:

1. An increased charge for coverage;
2. When their physician is deselected or terminated from the health plan;
3. If their drug coverage is modified under the plan;
4. Their plan's network adequacy status; and
5. Any decrease in the availability of providers in their network.

Many of these notice requirements specify that the health plan must send a written notice to the consumer, which is not always timely. In addition, as mobile phones and email have become widely adopted, consumers are getting information in new ways and have new preferences for how to receive information. Consumers should be able to receive legal notices from their health plan by their preferred means of communication, such as through email or text message.

Issue

Allowing consumers to receive information about their health plan's operations through text or email, in lieu of a mailed notice, would improve transparency and reduce administrative costs.

Recommendation

Amend Chapters 843 and 1301 of the Insurance Code to require health plans to give consumers the option to receive certain notices regarding their health insurance coverage by text message or email. Such notice must also include a link to the health plan's webpage where the full content of the information is provided. Grant TDI rulemaking authority to prescribe form and content with the input of stakeholders through the rulemaking process.