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September 8, 2020

House Insurance Committee

via email to Committee Clerk Sergio Cavazos at Sergio.Cavazos\_HC@house.texas.gov

Chairman Lucio,

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related health care entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

We are writing to provide information in response to your RFI regarding Senate Bill 1940, which extends TDI's authority to revise and administer a temporary health insurance "risk pool" or reinsurance program to the extent federal funds are available. Every Texan deserves access to affordable, comprehensive health care coverage regardless of their income, health status, or pre-existing health conditions. One of the Affordable Care Act's (ACA) main goals was to accomplish this through the individual health insurance market.

Almost 2 million hard-working Texans purchase their coverage through the individual market.<sup>1</sup> People with health coverage generally have a primary care physician and take advantage of critical preventive health care services, which means health coverage plays an essential role in ensuring families and communities stay healthy. Insured individuals are also better insulated from financial hardship and medical debt because their coverage protects them in the event of serious illness or injury. While the individual market continues to face challenges, health insurance providers are working to ensure the Texans they serve have coverage that protects their health and financial security.

Since its passage in 2010, the ACA has improved the health care system by protecting patients with pre-existing conditions, delivering affordable coverage options in the individual and group markets, reducing the uninsured by expanding Medicaid, and lowering costs for seniors on Medicare.

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<sup>1</sup><https://data.census.gov/cedsci/table?q=Texas&t=Health%20Insurance&g=0400000US48&tid=ACSST1Y2018.S2703&moe=false&hidePreview=true>

Prior to the ACA, Texas had a limited individual health insurance market. Health plans could deny coverage based on medical history, did not have to cover pre-existing conditions, and had the option to exclude maternity costs. Before 2014, only 700,000 Texans purchased insurance in the individual market each year.<sup>2</sup> Texas did maintain the Texas Health Insurance Pool (a “high-risk pool”) to help individuals with pre-existing conditions buy health coverage. While it did make coverage available, it had significant limitations. In 2013 — the last year of the high-risk pool — it covered only 28,000 Texans and was extremely expensive at over \$600 a month. The pool had a three month waiting period and did not cover any pre-existing conditions.

The ACA dramatically changed the individual market in America and in Texas. The size of Texas’ individual market more than doubled following adoption of the ACA, which provided comprehensive coverage for Texans who enrolled at monthly premiums that were substantially lower than those previously available in the Texas high-risk pool.<sup>3</sup> Any Texan could purchase health coverage in the individual market regardless of age, pre-existing conditions, or health status. Most individual plans, including those sold on the ACA exchange, must provide comprehensive health coverage that includes essential protections for patients with pre-existing conditions, prescription drug coverage, maternity benefits, and no annual or lifetime limits.

While the ACA has increased the number of Texans with health coverage, the state continues to face challenges related to providing access to affordable, quality, and sustainable health coverage. Texas has the highest rate of uninsured people in the country — and the number is rising. Most uninsured Texans are members of low-income working families. These uninsured Texans who are not eligible for the ACA’s subsidies (tax credits) are finding the full cost of premiums to be high and, for some, unaffordable. With rising unemployment and uncertainty around the ACA, it is more important than ever for us to make sure Texans have access to a stable and affordable individual health insurance market. Texas has several opportunities to innovate in the individual market in ways that could lead to more affordable coverage, increased choice, and more competition. **TAHP recommends the Texas Legislature study four opportunities:**

1. Operating a state-based exchange
2. Reducing premiums through reinsurance (1332 “state innovation” waiver)
3. Right-sizing subsidies (tax credits)
4. Helping small businesses use Health Reimbursement Arrangements (HRAs) to provide employees with coverage in the individual market

### **The Argument for a State-Based Exchange**

Stability has long been an issue for the individual market, even before the ACA. There was significant uncertainty in the first few years of the exchange, including rising premiums and

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<sup>2</sup> See Chart A in Appendix.

<sup>3</sup> See Chart B in Appendix.

insurers pulling out of the market. The market has since stabilized in Texas, and new carriers have decided to participate. However, there are still opportunities for increasing stability that could lead to lower premiums. States that operate their own exchanges have somewhat stronger enrollment (both on and off the exchanges) and lower premiums than states using the federally-facilitated marketplace (FFM). In 2018, The Commonwealth Fund found that in the individual market, insurers projected premiums that averaged 21% higher in states using the federal marketplace than in those running their own.<sup>4</sup> By establishing its own state-based exchange, Texas could create more stability and exercise more control over rising premiums. Recent cuts to the federal market's enrollment period, advertising funds, and consumer assistance funds make state-run exchanges even more attractive for states. By running its own exchange, a state can determine how to adapt its exchange to best cover its residents. These flexibilities have been incredibly beneficial during the COVID-19 pandemic, allowing states to hold special enrollment periods. If Texas had its own exchange, we could have opened a special enrollment period to address the considerable increase in unemployment caused by COVID-19.

### **Reducing the Cost of Health Coverage Through Reinsurance**

The availability of 1332 waivers, which allow states to waive key portions of the ACA, gives Texas the opportunity to make changes that increase the stability of the individual health insurance market, encourage competition, and increase affordability. The primary solution that other states are taking advantage of through 1332 waivers is called a reinsurance program. Reinsurance programs have significantly decreased health insurance premiums by an average of 16.9% in the individual market.<sup>5</sup> By reimbursing insurers for high-cost claims, a reinsurance program spreads risk across the broader state individual insurance market, thereby lowering gross premiums and increasing access to affordable private coverage. Reinsurance programs also help expand and strengthen the health insurance market, creating increased competition and more choices of plans.

The main obstacle Texas has faced to requesting and implementing a 1332 reinsurance program has been the cost, but Pennsylvania recently received approval for an innovative solution to this problem. Pennsylvania realized it could operate a state-based exchange at a fraction of the cost of the federal government's exchange and use those savings to pay for a 1332 reinsurance program. Operating costs for states on the federal exchange are growing as a result of expensive reliance on healthcare.gov, which is built to support multiple states and has an inflexible infrastructure that does not easily support policy change.<sup>6</sup> While it was expensive for a state to build and operate an exchange when the ACA first launched, technology is simply less expensive now and private vendors can build systems for a fraction of the original cost. The federal government

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<sup>4</sup><https://www.commonwealthfund.org/blog/2018/health-insurance-markets-perform-better-states-run-their-own-marketplaces>

<sup>5</sup><https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-16-9-on-average>

<sup>6</sup><https://company.getinsured.com/should-your-state-consider-building-a-state-based-exchange/>

currently charges around a 3% assessment fee for the federal marketplace.<sup>7</sup> If a state can operate its own exchange for substantially less, it can use the net savings from the 3% assessment fee to fund a 1332 reinsurance program. For instance, Nevada estimates that its 3% assessment fee would translate into approximately \$12 million for the state and, with its own platform, operational costs will be closer to \$6 million in 2020— a savings of 50%.<sup>8</sup> Similarly, CMS recently approved Pennsylvania’s 1332 application, which uses exchange user fee savings to implement a reinsurance program that will reduce health insurance premiums.<sup>9,10</sup> Consumers are expected to see approximately 5% lower premiums in 2021 and, as a result, the state is expecting more individuals to purchase coverage.

These same savings could be used for a Texas reinsurance program and help reduce premiums. Texas insurers paid over \$204 million in healthcare.gov user fees in 2018 alone<sup>11</sup> — costs passed on to Texas enrollees and small businesses in their premiums. If Texas could operate an exchange at half the cost of the federal exchange, it would result in \$100 million savings that could be used to fund a reinsurance program under a 1332 waiver. TAMP strongly encourages the Legislature to consider these innovative solutions and the savings opportunities of 1332 waivers, which can be leveraged to reduce premiums and increase coverage for Texans.

### **Right-sizing Subsidies in Texas**

States that have not expanded Medicaid have a health insurance affordability issue called the “Coverage Gap.” In Texas, individuals whose family incomes are between 100% and 400% of the FPL are eligible for federal subsidies (tax credits) that substantially lower their premiums in the individual market. As a result of these subsidies, premiums are about \$70-\$80 a month. But Texans whose incomes are below 100% of the FPL are not eligible for any subsidies and are forced to pay the full premium, which is around \$440 a month. The lack of affordability for working Texans who do not receive subsidies or have access to employer-based coverage is extremely concerning. Texas should study policy options that right-size these subsidies or expand access to subsidies so that working Texans below the poverty limit are not put at a disadvantage. It makes no sense that Texans above the poverty limit receive substantial government support to purchase health coverage in the individual market while working Texans below the poverty limit receive no support.

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<sup>7</sup><https://www.healthaffairs.org/doi/10.1377/hblog20190419.213173/full/#:~:text=User%20Fee%20For%20Federally%20Facilitated,from%203%20percent%20in%202019>

<sup>8</sup><https://www.nashp.org/nevadas-insurance-exchange-director-heather-korbolic-talks-about-transitioning-to-a-state-based-marketplace/>

<sup>9</sup><https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-PA-Fact-Sheet.pdf>

<sup>10</sup><https://www.insurance.pa.gov/Coverage/Documents/Pennsylvania%201332%20reinsurance%20waiver%20final%20application.pdf>

<sup>11</sup><https://company.getinsured.com/cms-user-fees-for-ffm-states-reached-1-87b-in-2018/>

## **Helping Small Employers Use HRAs to Provide Employee Coverage**

Last summer, a federal rule was adopted that provides employers with significant new flexibility in how they fund health employee health coverage through HRAs. The rule allows employers of all sizes that do not offer a group coverage plan to fund a new kind of HRA, known as an individual coverage HRA (ICHRA). Employer premium reimbursements are deductible by the employer and exempt from payroll and income taxes. ICHRAs empower individuals to take greater control over what health insurance benefits they receive by allowing them to purchase coverage directly on the individual market. The Treasury estimates that over 10 million employees would benefit from this change within the next decade.<sup>12</sup> This new coverage solution is particularly beneficial for small employers, making it easier for them to compete with larger businesses by creating another option for financing employee health insurance coverage.

In Feb. 2020, TDI issued Bulletin # B-0003-20<sup>13</sup> stating that Texas law generally applies employer group requirements to an individual's health coverage when their employer pays a portion of the premium or claims a federal tax benefit for providing benefits. The bulletin did recognize an exception for arrangements complying with the federal ICHRA requirements. We recommend the Legislature codify this exception rather than rely upon a regulatory bulletin to allow these valuable coverage products in Texas. Additionally, Texas should recognize and actively promote ICHRAs to Texas employers as an option for providing their employees with critical access to affordable coverage. Texas should also consider any other options that will incentivize or encourage small employers that have not previously provided coverage to provide these new HRAs. We strongly believe that if more employers in Texas were aware of the advantages of ICHRAs, they would consider offering these arrangements to their employees, increasing the number of Texas that have access to affordable health insurance coverage.

Thank you for your leadership on this important issue. TAHP and our members appreciate your receptiveness to the information and perspectives we provide in this letter. We stand ready to help as you continue to explore legislative options to ensure Texans have access to affordable health care coverage in our state.

Sincerely,



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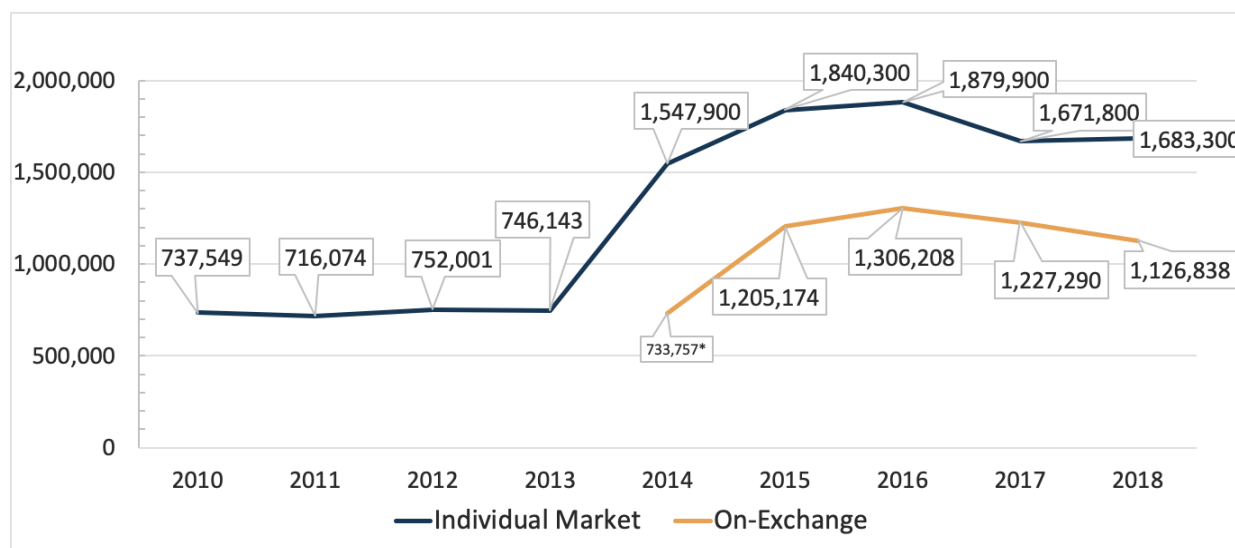
<sup>12</sup><https://www.federalregister.gov/documents/2019/06/20/2019-12571/health-reimbursement-arrangements-and-other-account-based-group-health-plans>

<sup>13</sup><https://www.tdi.texas.gov/bulletins/2020/B-0003-20.html>

## Appendix

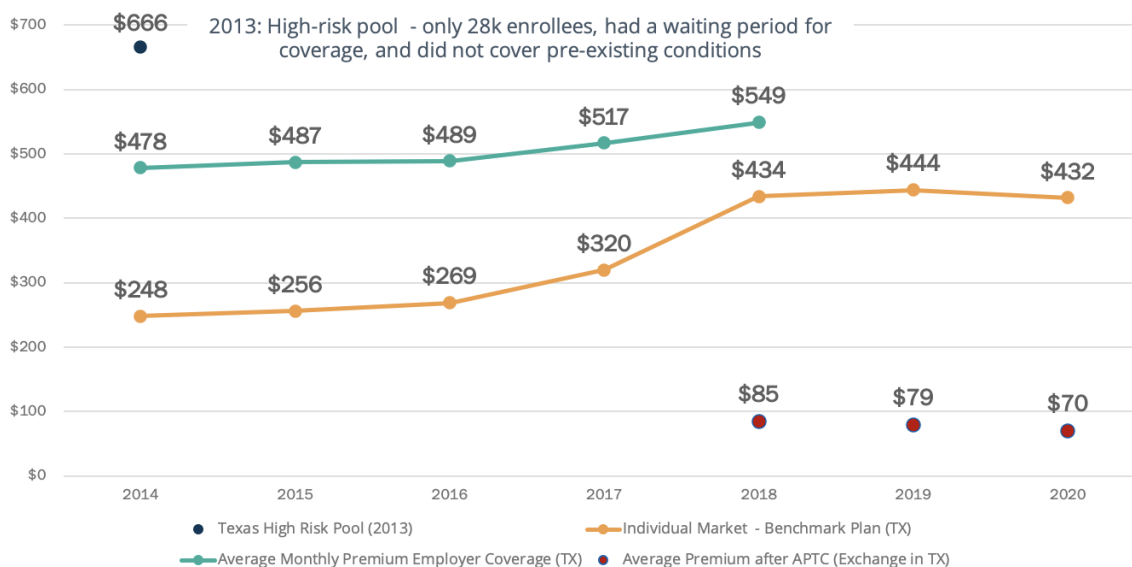
**Chart A**

**Number of Texans who purchased insurance on Individual Market and Exchange (2010 - 2018)<sup>14</sup>**



**Chart B**

**Cost of Health Coverage in Texas (2014 - 2020)<sup>15</sup>**



<sup>14</sup><https://data.census.gov/cedsci/table?q=Texas&t=Health%20Insurance&g=0400000US48&tid=ACSST1Y2018.S2703&moe=false&hidePreview=true>

<sup>15</sup><https://cdn.ymaws.com/www.tahp.org/resource/collection/1898B1B8-6C6A-4052-A0E1-59EF120557CF/Pati%20McCandless%20FFT%20.pdf> (Texas High Risk Pool); <https://www.kff.org/statedata/>