



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

June 4, 2012

THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

RE: Requirements for Professional and General Liability Insurance Reimbursement Add-Ons

Dear Nursing Facility Provider:

The Texas Health and Human Services Commission (HHSC) specifies the types of liability insurance coverage a nursing facility must have in order to receive the applicable professional and general liability insurance reimbursement add-ons.

What types of insurance will automatically qualify for the add-on(s)?

Insurance described under items (1) – (4) below will automatically qualify for the liability insurance add-on(s).

- (1) Liability insurance issued by an admitted (licensed) insurer authorized to write liability insurance in Texas (designated "active" on the Texas Department of Insurance (TDI) website at: <http://onyxpub.tdi.state.tx.us/pcci/pcci.search>);
- (2) Liability insurance issued by an eligible surplus lines insurer in accordance with Chapter 981 of the Insurance Code, which requires that there be a Texas-licensed surplus lines agent placing the coverage with the insurance company (designated "eligible" on the TDI website);
- (3) Liability insurance issued by the Texas Medical Liability Insurance Underwriting Association (JUA) established under Article 21.49-3 of the Insurance Code (designated "active" on the TDI website); or
- (4) Liability insurance issued by a risk retention group that is registered with the TDI and which is designated as "registered" on the TDI website.

What documentation is required for insurance that automatically qualifies for the add-on?

Each contracted entity with insurance described under items (1) – (4) above must submit the following documentation to HHSC Rate Analysis to qualify for the liability insurance add-on(s):

- (1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis signed by an authorized signatory for the provider as per the Department of Aging and Disability Services (DADS) Form 2031; and
- (2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of

coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences.

For catastrophic or excess liability coverage, the evidence of coverage must also include the sum that the catastrophic or excess coverage must exceed to become payable. **Binders are not acceptable as evidence of insurance.**

Contracted providers with current active and eligible insurance policies *should not send in the above information until the renewal date* of their insurance policies.

What types of insurance DO NOT automatically qualify for the add-on(s)?

Insurance described under items (1) – (2) below **will not** automatically qualify for the add-on(s).

- (1) Liability insurance issued through an insurance transaction involving an insurance contract independently procured under Section 101.053(b)(4) of the Insurance Code from an insurance company not licensed in Texas through negotiations occurring entirely outside the state of Texas that is reported and on which premium tax is paid, and
- (2) Liability insurance issued by a company providing either general or professional liability insurance purchased under Section 101.053(b)(6) of the Insurance Code from a nonadmitted captive insurance company that provides liability insurance solely for the directors and officers of the company's parent and/or affiliated companies and/or the risks of the insurance company's parent and/or affiliated companies that is reported and on which premium tax is paid.

In order for these types of insurance to qualify for the add-on(s), additional requirements as described below must be met.

What are the additional requirements for independently procured insurance?

The liability insurance add-on(s) will not be paid to any nursing facility contracted provider with independently procured insurance until HHSC Rate Analysis has received the following documentation from the provider.

- (1) A signed and notarized affidavit in the form provided by HHSC and signed by an authorized signatory for the contracted provider as per DADS Form 2031; and
- (2) Evidence by submitting a copy of Comptrollers Office Public Accounts form 25-103 that independently procured insurance taxes on the premiums were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed by the Comptroller's due date.

HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied meets the requirements to authorize payment of the add-on(s).

If the affidavit and evidence of payment receipt of independently procured taxes on the premiums are not received by HHSC by the end of the business day on June 15 for the calendar year in which the policy is procured, continued, or renewed, HHSC will stop payment of the add-on(s) until proof of payment of premium taxes is received by HHSC. Upon receipt and review of the affidavit and supporting information and a determination that the information provided meets the requirements to authorize payments, payments will be made retroactively to the first day of the first full month of the insurance policy or the date the liability insurance rates were stopped, whichever is later.

If HHSC believes that a contract may not qualify as independently procured insurance, it may make a referral to the Texas Department of Insurance (TDI) to determine if a violation of the Texas Insurance Code has occurred.

What are the additional requirements for captive insurance?

The liability insurance add-on(s) will not be paid to any nursing facility contracted provider claiming captive insurance until HHSC Rate Analysis has received the following documentation from the provider.

- (1) A signed and notarized affidavit in the form provided by HHSC, signed by an authorized signatory for the contracted provider as per DADS Form 2031;
- (2) Any requested supporting information regarding the financial arrangements and affiliation between the provider and the captive insurance company; and
- (3) Evidence by submitting a copy of Comptrollers Office of Public Accounts form 25-108 that captive insurance taxes on the premiums were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed by the Comptroller's due date.

HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied meets the requirements to authorize payment of the add-on(s). It is the responsibility of the nursing facility to obtain any requested information from the captive insurance company or affiliates.

If, upon receipt and review of the affidavit and supporting information, HHSC believes that a contract may not qualify as captive insurance, it may make a referral to TDI to determine if a violation of the Texas Insurance Code has occurred.

Insurance purchased through an "active" or "eligible" insurance company will automatically qualify for the add-on payment, regardless of whether such risk has been reinsured by a captive insurance company.

If the affidavit and evidence of payment receipt of captive insurance taxes on the premiums are not received by HHSC by the end of the business day on April 1 for the calendar year in which the policy is procured, continued, or renewed, HHSC will stop payment of the add-on(s) until proof of payment of premium taxes is received by HHSC. Upon receipt and review of the affidavit and supporting information and a determination that the information provided meets the requirements to authorize payments, payments will be made retroactively to the first day of the first full month of the insurance policy or the date the liability insurance rates were stopped, whichever is later.

What about unauthorized insurance?

Liability insurance payments will not be made to facilities that obtain insurance from an insurer or person engaged in unauthorized insurance as set forth in Chapter 101 of the Texas Insurance Code, Unauthorized Insurance. It is the responsibility of the nursing facility contracted provider to ensure that liability insurance submitted for payment is authorized. Liability payments made on insurance that is later determined by the Texas Department of Insurance to be unauthorized insurance under Chapter 101, Texas Insurance Code will be recouped.

When will my add-on payment(s) begin and when will they end?

For policies becoming effective on the first day of the month, the add-on(s) will be effective on the first day of the month. For policies with effective dates that are not the first day of the month, the add-on(s) will become effective the first day of the following month. For policies that expire on the last day of the month, the add-on(s) will be discontinued on the last day of the month. For policies with expiration dates that are not the last day of the month, the add-on(s) will be discontinued at the end of the month that includes the expiration date. Additionally, independently procured and captive insurance that does not meet the requirements set forth in Chapter 355, Medicaid Reimbursement Rates, TAC §355.3129d) and (e) will have additional rate add-on funds recouped.

What are my responsibilities when there are changes to my facility's liability insurance?

It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change.

Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance add-on(s) being stopped until documentation of the renewal is received by HHSC Rate Analysis.

Where can I access the required forms and affidavits?

Blank liability insurance coverage certification forms and affidavits for independently procured and captive insurance, address in which to send the original forms as well as the rules governing the liability insurance add-on may be accessed on our web site at:

www.hhsc.state.tx.us/rad/index.html.

Who can I call if I have additional questions concerning the liability add-on?

Please call the Rate Analyst if you have any questions regarding the contents of this letter or questions regarding the nursing facility liability insurance add-on(s).

Sincerely,

Rate Analysis, Mail Code H-400
512-491-1372; FAX: 512-491-1369