

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.38

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes to amend §41.38 (relating to Termination Date of Coverage) under Subchapter C (relating to Texas School Employees Group Health (TRS-ACTIVECARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes to delete §41.38(a)(7) to eliminate participants' ability to voluntarily terminate their TRS-ActiveCare enrollment in the middle of the plan year. This change addresses the instability to the TRS-ActiveCare trust fund that this conduct creates, including disruptions to premium collection, rate setting, increased risk of adverse selection, and administrative burden. As trustee of the program, TRS is proposing this amendment to protect the fiscal health and stability of the trust fund, which in turn serves the best interests of all plan participants. The following factors support this proposal.

First, allowing a participant to leave TRS-ActiveCare mid-year is inconsistent with industry standards. Typically, individuals enrolled in a health plan are required to remain enrolled until the end of that plan year, absent a qualifying mid-year life event that, under HIPAA regulations, require health plans to permit enrollment changes, such as termination of employment, reduction in work hours, death, divorce, marriage, or the birth or adoption of a child.

Second, allowing TRS-ActiveCare enrollees to voluntarily drop coverage throughout the year adversely affects rate calculation and premium collection. For example, participants that drop coverage after high-cost services are received no longer contribute to the risk pool placing upward pressure on the remaining participants' premiums to cover those expenses. As another example, healthier participants that end their coverage as a way of managing mid-plan-year financial constraints shift claim burdens to higher-cost participants and drive premium increases in subsequent plan years.

Also, allowing individuals to leave the TRS-ActiveCare program in the middle of the plan year increases the administrative burden of managing the program driving up administrative costs.

Therefore, TRS proposes to remove §41.38(a)(7) from §41.38 and renumber the rest of the rule accordingly. It is TRS' fiduciary duty to administer the program in a fiscally responsible manner and to safeguard the TRS-ActiveCare trust fund from the adverse selection and administrative burden resulting from voluntary mid-year enrollment drops. Protecting the trust fund helps maintain stable rates and premiums and supports the interests of all members and dependents who participate in the plan.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments to §41.38 will be in effect, there will be no foreseeable negative fiscal implications for state governments and no foreseeable fiscal implications for local governments as a result of administering proposed amended §41.38. Requiring members to stay in the TRS-ActiveCare program through their plan year will save costs to the program, which will ultimately aid the health of the TRS-ActiveCare trust fund.

PUBLIC COST/BENEFIT

For each of the first five years proposed amended §41.38 is in effect, Mr. Green anticipates significant public benefit. The change will create stable rate calculation and premium collection while also saving costs to the TRS-ActiveCare trust fund, which could be used to lower rates and premiums. Mr. Green has also determined that entities required to comply with the proposed amended rule will not incur any economic cost.

Mr. Green has determined this rule amendment will not imply economic costs to persons required to comply with the rule. While continued participation in the plan would require participants pay the cost of the premiums through the end of the plan year, they will also avoid greater financial risk associated with going without coverage. Therefore, the future costs for individual participants who wish to drop coverage mid-year cannot be determined.

In contrast, this rule amendment promotes financial stability in the TRS-ActiveCare risk pool, helping public education employers (local government/regulated persons) avoid the additional costs of adverse selection that can occur when a health plan member who has coverage, seeks care generating claims cost, then drops coverage after the treatment to avoid individual premium contributions for the balance of the year. The TRS-ActiveCare trust fund operates as a pooled risk arrangement, with participant contributions priced on the assumption of stable enrollment for the full plan year to cover expected claims, volatility, and fixed administrative and reserve costs. As a fiduciary, TRS has a mandate to prudently administer the trust's resources to deliver reliable health benefits to Texas educators.

Allowing participants to exit mid-year ends their contributions without proportionally reducing the plan's risk, since claims remain unpredictable and fixed costs do not change. This shifts higher per-capita risk and volatility to remaining participants and exacerbates adverse selection. Depending on the extent of the claims cost incurred before the member drops, early exits may also contribute to future funding shortfalls, increasing contribution pressure in later years for both remaining participants and those who later re-enroll. Through this amendment, TRS seeks to balance individual flexibility with the collective benefit of a stable risk pool.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that proposed amended §41.38 will not have any adverse economic effect on small businesses, micro-businesses, or rural communities. As a result, the requirements for an

economic impact statement or a regulatory flexibility analysis under Government Code §2006.002 do not apply in this case.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years proposed amended §41.38 is in effect, proposed amended §41.38 will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will amend an existing regulation; will limit the existing rule by repealing a member's ability to terminate enrollment in the middle of the play year, without a special enrollment event, which is allowed by the existing rule; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

This proposal amends an existing regulation. The proposed changes to §41.38 modify the rule through which TRS, as trustee of the Texas School Employees Uniform Group Health Coverage Act created under Chapter 1579 of the Insurance Code, will remove the ability for enrollees of the TRS-ActiveCare program to voluntarily drop coverage at the end of any month of their plan year. Specifically, by amending the rule to remove the option to leave mid-year, enrollees will be required to qualify for a special enrollment event under HIPAA to leave before the end of the plan year.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

TRS requests written comments regarding the proposed amended rule. The comments may include information related to the costs, benefits or effects of the proposed amended rule, including any applicable data, research or analysis, from any person required to comply with the proposed amended rule or any other interested person.

Comments and information regarding the cost, benefit and effect of the rule may be submitted in writing to Brian Guthrie, TRS Executive Director, PO Box 149676, Austin, Texas 78714-0185. Written comments and cost/benefit information must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amended rule is authorized under Chapter 1579 of the Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage Act (TRS-ACTIVECARE). Specifically, §1579.052 grants the trustee the authority to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1579, including those related to enrollment periods coverage selection, and procedures for changing enrollment. Additionally, the proposed amended rule is supported by Chapter 825 of the Government Code, which governs the TRS administration, and §825.102 of the Government Code, which authorizes the Board to adopt rules for the transaction of the business of the Board.

CROSS-REFERENCE TO STATUTE

The proposed amended rule implements the Insurance Code § 1579.052, related to Authority to Adopt Rules and Procedures; Other Authority, which authorizes the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1579, including periods of enrollment and coverage selection and outlines the procedures for enrolling and exercising options under the group program.

§41.38. Termination Date of Coverage.

(a) Unless otherwise required by law or this section, coverage shall terminate at the earliest of:

- (1) 11:59 p.m. Austin Time on the last calendar day of the month in which the covered individual's employer, or the employer of the individual under whom a dependent qualified for coverage, ceases to be a participating entity;
- (2) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, terminates employment as determined by the participating entity, except as otherwise provided under §41.39 of this title (relating to Coverage for Individuals Changing Employers);
- (3) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, is no longer eligible for coverage under TRS-ActiveCare under §41.34 of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program);
- (4) 11:59 p.m. Austin Time on the date specified by the trustee if the covered individual, or the individual under whom a dependent qualified for coverage, is expelled from the program;
- (5) 11:59 p.m. Austin Time on the last calendar day of the month immediately preceding the month in which TRS receives a notification from a participating entity, in the form prescribed by TRS, that a covered individual failed to make a required monthly premium payment to the participating entity;

(6) 11:59 p.m. Austin Time on the last calendar day of the month in which a covered individual enters into active, full-time military, naval, or air service, except as provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) or other applicable law;

~~[(7) 11:59 p.m. Austin Time on the last calendar day of the month in which the administering firm or TRS receives notice, in a form acceptable to TRS, that a covered individual, or the individual under whom a dependent qualified for coverage, has chosen to voluntarily drop coverage under TRS-ActiveCare;]~~

~~(7)~~[(8)] 11:59 p.m. Austin Time on the last day of the month for which TRS-ActiveCare received payment if the participating entity employing the covered individual, or the individual under whom a dependent qualified for coverage, has failed to make all premium payments due for a period of 90 days or longer; or

~~(8)~~[(9)] the termination date and time that a health maintenance organization participating in TRS-ActiveCare provides for in its Evidence of Coverage for the reasons listed in that Evidence of Coverage.

(b) Notwithstanding subsection (a) of this section, a covered individual who resigns his employment position with a participating entity effective after the last day of an instructional year and who is in "good standing" with TRS-ActiveCare at the time of the effective date of resignation, is entitled to automatically remain enrolled in TRS-ActiveCare, through the earlier of (1) the first anniversary of the date participation in or coverage under TRS-ActiveCare was first made available to employees of that participating entity for the last instructional year in which the covered individual was employed by the participating entity, or (2) the last calendar day before the first day of the instructional year immediately following the last instructional year in which the employee was employed by the participating entity, provided none of the events described in provisions of subsection (a) of this section occur after the effective date of the covered individual's resignation. Consequently, if the employer of the covered individual became a participating entity in TRS-ActiveCare on or before the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual may automatically be entitled to coverage through the August 31st that immediately follows the effective date of resignation, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective date of the covered individual's resignation. Alternatively, if the employer of the covered individual became a participating entity in TRS-ActiveCare after the September 1st that immediately preceded the effective date of resignation by the covered individual, then the covered individual may automatically be entitled to coverage through the end of the 12th month of that participating entity's participation in TRS-ActiveCare, assuming termination does not sooner occur due to the occurrence of an event described in provisions of subsection (a) of this section after the effective

date of the covered individual's resignation. A dependent enrolled in TRS-ActiveCare under a covered individual who qualifies for continued coverage pursuant to this subsection is also automatically entitled to remain enrolled in TRS-ActiveCare only for such time as the covered individual remains enrolled in TRS-ActiveCare. For purposes of this subsection only, the following applies:

(1) A covered individual is in "good standing" with TRS-ActiveCare if, on the effective date of the individual's resignation:

(A) the covered individual has not been expelled from TRS-ActiveCare;

(B) TRS has not received a notification from the participating entity that employed the covered individual, in the form prescribed by TRS, that the covered individual failed to make a required monthly TRS-ActiveCare premium payment to the participating entity; and

(C) neither the participating entity that employed the covered individual, nor the covered individual under whom a dependent qualified for coverage, failed to make all premium payments due for a period of 90 days or longer.

(2) For each participating entity that provides instruction to students, the term "instructional year" shall be the locally established calendar period during which that participating entity holds classes, exclusive of summer school. In no event may this "instructional year" extend beyond June 30th.

(3) For each participating entity that does not provide instruction to students, the participating entity may establish an "instructional year" that begins no earlier than August 1st and does not extend beyond June 30th.

(4) If a participating entity does not establish an "instructional year," the "instructional year" shall be deemed to begin on September 1st and to extend through May 31st.

(5) Each participating entity shall have only one "instructional year," which shall be applicable to all covered individuals employed by the participating entity.

(c) For individuals receiving continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) ("COBRA"), coverage shall terminate the earlier of:

(1) 11:59 p.m. Austin Time on the last calendar day of the month immediately preceding the date on which TRS fails to receive a timely and complete monthly premium payment from an individual receiving COBRA continuation coverage; or

(2) 11:59 p.m. Austin Time on the last calendar day of the month in which an individual's eligibility for COBRA continuation coverage expires or otherwise terminates.

CERTIFICATION

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.