

ConsumerLine

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Battleground shifts for consumers in 2000

Editor's note: This edition of *ConsumerLine* looks ahead to some of the key issues that Texas consumers will face in the year 2000. Consumers Union advocates will actively monitor and participate in proceedings related to these issues. They will routinely appear before state administrative agencies, legislative committees and the news media staking our position on these matters in defense of Texas consumers.

Telecommunications

In 1999, Southwestern Bell again showed its political clout by passing a bill which freezes basic resi-

dential rates for six years (through 2005). But the bill really protects business — not residential — customers. The legislation increased surcharges on individual consumer bills such as caller ID, late fees and other special service fees. It provided no guarantee that lower intrastate long distance rates resulting from lower access charges will be passed on to consumers.

In essence, the bill prematurely deregulated the price of most services in the absence of real competition in the local market. In 2000, Consumers Union will continue to participate in rulemaking proceedings on the new law and will monitor and report on rate increases and

any other impacts on consumers as a result of the legislation supported by Southwestern Bell.

A bright spot on the 1999 session was new legislation giving the Public Utility Commission broad authority to address marketplace abuses such as “slamming” and “cramming.” The PUC today is better able to implement customer protection rules, prevent fraud and misleading practices, require “readable” bills, set standard disclosures for prepaid calling cards, and implement “automatic enrollment” into the Lifeline rate discount program for clients of the Texas Department of Human Services.

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As I See It



by Reggie James

ConsumerLine typically provides a current snapshot of how state public policy decisions will affect consumers and what our office is doing to advocate for the consumer

interest. We deviate slightly from that approach in this issue to provide a more forward thinking perspective on important policy issues as well as our priorities for shaping policy to better serve consumers as we approach the 2001 legislative session and begin the 21st century.

Aside from the millennium madness that has spawned countless retrospectives and forecasts, there are several reasons why this year will be particularly important for the well-being of consumers in Texas for years to come. The 2000 presidential (and congres-

sional) elections will shape policies affecting the consumer interest at both the national and state levels. Moreover, given Governor Bush's prominence in the race, the elections will also have the indirect effect of exposing state policies enacted under his watch to national scrutiny. For better or for worse, national attention will affect how state policymakers behave. While it may be wishful thinking, it is my hope that the national spotlight will counteract the tendency for our lawmakers to be unduly influenced by business interests.

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Prescription rights: the rules for eyeglasses

When it comes to prescription rights, consumers often are unaware of the laws governing what doctors can and cannot do. In the last issue of *ConsumerLine*, we detailed the rules for contact lens prescriptions. This

Prescription release

The eye glass prescription law requires your doctor to give you your eyeglass prescription. Your doctor can only refuse to provide your eyeglass prescription if you have not paid the examination fee.

sumers have reported being told by their doctors that state law limits eyeglass prescriptions to one year. This is **false**. Texas law places no restrictions on the length of eyeglass prescriptions nor does it require an eye doctor to even put an expiration date on eyeglass prescriptions. However,

if your eye doctor **chooses** to put an expiration date on your eyeglass prescription, it is not valid after that date. Unless you have an unusual eye care problem, talk to your doctor about leaving the expiration date off of the prescription and then get your eyes checked every two years (the regular interval recommended for most adults according to the American Optometry Association). Should your doctor choose to put an expiration date on your eyeglass prescription, ask for a two-year expiration date.

Prescription	Contact Lenses	Eyeglasses
Expiration date required?	YES	NO (BUT the eye doctor can choose to put an expiration date on the prescription)
Eye doctor MUST release prescription?	YES, BUT the doctor can refuse due to health-related reasons (and nonpayment of exam or fitting fee)	YES (except for nonpayment of exam fee)
Prescription length requirements.	NO less than one year, but with an automatic two-month extension upon request. (But it can be written for less than one year due to health-related reasons)	NO requirement regarding length of time. (BUT if the eye doctor adds an expiration date, it will be invalid after that date)

issue informs you of your prescription rights for eyeglasses within the state of Texas. Readers in other states should contact their state optometry board for details on their prescription rights.

Expiration dates

Eye doctors are not required under Texas law to put expiration dates on eyeglass prescriptions; however, they may choose to do so. Some con-

sumers Union will continue monitoring the eye doctors' compliance with the law and, if the situation warrants it, may recommend remedial action to the Texas Legislature. ♦

ADVOCACY WEBSITE

Consumers Union's advocacy site has moved to www.consumersunion.org in order to facilitate access. The site includes reports and studies from CU's advocacy offices in Austin, San Francisco, Washington, D.C. and the Consumer Policy Institute in Yonkers, N.Y. Also included are legislative and administrative testimony, news releases, newsletters and opinion pieces. Among the issues covered are health, financial services, utilities, product safety and the environment. ♦

Groups weigh in on redlining battle

Consumers Union and three other public interest organizations filed a brief in January with the Texas Supreme Court asking the court to reject an insurance industry attempt to block the release of automobile insurance data used to detect the presence of insurance discrimination, or “redlining.”

The Texas State Conference of NAACP Branches, the National Council of La Raza, and Common Cause of Texas joined Consumers Union in filing the brief, which they called “fundamental to public oversight of government.” Late last year, a brief calling for the opening of the records was filed by the Freedom of Information Foundation of Texas.

At issue is the release of “quarterly

market reports” by the Texas Department of Insurance. Data from the reports can help identify auto insurers that are redlining low income and minority neighborhoods in Texas.

Several insurance companies sued to block the release of the information and a District court in

Austin ruled in their favor. The Third Court of Appeals overturned the District Court’s decision and the insurers appealed that decision to the Texas Supreme Court.

The Court’s decision was pending as *ConsumerLine* went to press. ♦



As I See It

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There are several issues that, while important to the public interest, are not among our office priorities. State policy requires performance testing for our school children, yet the state has not adequately addressed the needs of children who fail to meet performance standards. Due to years of environmental neglect the city of Houston has surpassed Los Angeles as the city with the poorest air quality in the United States. The state has failed to spend available funds for moving people from public assistance into the

workforce and has allowed funds that were intended for job training to be wasted or misused by the private sector.

This issue of *ConsumerLine* will not address all of the most important issues in the state nor will it address all of the issues we work on. We do believe, however, that we have captured the most important issues relating to basic needs and where consumers can not ordinarily help themselves in the market. Classic issues fitting this description are health care, utilities, insurance and financial services. Coincidentally, many of our priority issues will be addressed next legislative session in the state Sunset

Review process wherein state agencies are examined on a 12-year cycle to determine if they are fulfilling their statutory mandates. Much of the data and arguments you see in this issue will be presented to the Sunset Commission during their reviews and to the Legislature when it convenes in January 2001.

The Texas economy remains strong enough to supply sufficient state revenue to address the issues we raise as well as others. What will be needed is the will to direct such resources where they are needed while the opportunity exists. This will be a significant year indeed. ♦

Consumers in 2000

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CU will participate in the drafting of necessary rules to update the current customer protection rules and make them applicable to new market entrants.

Also, CU successfully pushed legislation that will ensure Texans who use prepaid calling cards have better information to evaluate their services through disclosure of per-minute rate, minimum rate, and call fees associated with these cards. Rules implementing the new law are expected this year.

Electric restructuring: the devil is in the details

The difficult and painstaking work of implementing a bill to restructure the electric industry in Texas will be high in the list of Consumer Union priorities for 2000.

Soon after the Legislature left Austin last summer, the dust on the electric front — rather than settling — began blowing again with renewed force. Players began trying to win through the regulatory process that which they lost during the legislative process. For example, industrial customers asked the Public

Utility Commission to renege on the stranded cost allocation compromise formula in SB 7 and pass on a greater share of the costs to residential ratepayers.

The issue of stranded costs is one of several highly technical issues to be considered this year by the PUC in more than 20 separate proceedings. CU will advocate strongly for issues such as: fair treatment of stranded investment, protection against market power abuse, placing limits on utilities' issuance of bonds to repay their debt, customer service protections, environmental protections, and low-income assistance programs.

A new electric restructuring Legislative Oversight Committee was created as a result of the 1999 legislation. The committee will monitor implementation of the law and Consumers Union will participate in committee hearings throughout 2000 and brief committee members.

The challenge now is to take the bill that passed

and work toward its application in a manner which is in the best interest of residential customers.

Payday loan scams

Addressing high-cost payday loans will continue to be a priority in the year 2000. Texas law prohibits the high-cost kinds of lending practices that have flourished in other states, but using loopholes in the law we have seen growth in the number of payday loan lenders. These loans are typified by extremely high costs, the use of a check as security for the loan, and the fact that borrowers often get caught up in a cycle of debt.

During the 1999 legislative session, payday lenders attempted to authorize these high-cost loans in Texas. Consumers Union worked successfully with legislators to stop the proposed legislation.

Last year the Texas Attorney General filed lawsuits against several payday lenders. One suit was against a lender that attempted to disguise loans as the sale of an advertisement. The suit, settled last December, included restitution for customers. We expect progress on the other suits and additional suits to be filed in 2000.

In a new twist, some lenders are attempting to avoid state usury limits by teaming with national banks to “export” loans into Texas using an interpretation of federal law that supposedly preempts state interest rate limits. Essentially, lenders attempt to establish agents in Texas who purport to accept loan applications that are then approved in another state without interest rate limits. The loans are then made at very high rates that would otherwise exceed state usury limits. This phenomenon is growing and is a problem in all states with usury limits. It is unclear whether federal regulators will permit this practice or whether the practice would survive a legal challenge in Texas.

Legislative interim committees and Texas' small loan regulator are



reviewing the status of payday lending in Texas. Consumers Union remains concerned that such abusive lending practices, left unchecked, will trap Texas families in a cycle of perpetual debt.

Making insurance available to low-income Texas children.

Passage of the Children's Health Insurance Program (CHIP) was one of the most significant victories of the 1999 legislative session. Now comes the challenging and rewarding phase of implementing the program in Texas. It is scheduled to become available in May 2000.

The program, available to working families earning less than two times the poverty level (\$33,000 for a family of four) has some potential roadblocks ahead. For example, children applying for CHIP who are eligible for Medicaid can only enroll in Medicaid. But because of Medicaid's "stair step" eligibility system based on income and age, some families will have children in both programs. While the same application will be used for all kids' insurance programs, the enrollment process now requires the lowest income children to jump through the most hoops to get coverage.

CU recommends the following changes to Medicaid enrollment:

Problem: Parents must schedule a face-to-face meeting at the welfare office to apply for Medicaid and must repeat the process every six months, to keep their children covered.

Solution: Allow children to apply by mail or phone. Thirty-eight states now allow mail-in applications.

Problem: Medicaid applies an "assets" test for eligibility. Any liquid assets (such as a savings account) worth more than \$2,000 or a second car worth more than \$4,650 will make them ineligible. These children could then get into CHIP, but only after going through a bureaucratic hassle to screen them for Medicaid.

Solution: Drop the assets test for



children. Forty states have dropped this assets test for children.

Problem: Medicaid covers children only as long as their parents' income remains within the eligibility limits. Any income changes must be reported. It is typical for a child to go off and on Medicaid every few months due to fluctuations in family income.

Solution: Allow 12-month "continuous eligibility" for Medicaid children, regardless of their parents' income. Texas CHIP and 15 other states' Medicaid programs have adopted continuous eligibility for kids.

Uninsured Texans...
Still With Us

Despite efforts in the 1990s to make health insurance coverage available and affordable to more uninsured Texans and unprecedented economic prosperity, Texas ranks first nationally with the highest percentage of uninsured. A Blue Ribbon Task Force on the Uninsured, with legislative and public members, is now holding hearings around the state, taking testimony from the public. The Task Force, chaired by Senator Chris Harris, wants to hear about problems people are having finding health insurance and is seeking ideas

for making insurance available to more people. These are open meetings during which anyone can speak. The schedule for the year has not yet been finalized.

Health insurance regulation reform alone is unlikely to significantly decrease the numbers of uninsured, mainly because a significant majority of the uninsured don't have the money to pay premiums. Two ways to address this problem would be to (1) provide targeted subsidies

innovative ways to address housing and development issues in low-income areas.

During the past few years, Consumers Union has managed a CRA project in Texas which has served as a catalyst for creating a sustained, statewide effort to challenge lending discrimination, educating community groups through research, and monitoring lending institutions' performance in low-income and minority communities.

Pesticide safety rises to the level of priority for us because there are few other groups concentrating on the issue in Texas and because most of the risks — especially to children — are unnecessary. Our goal is to identify the risks where possible and eliminate such risks where they are known.

While several states — such as California, New York and Oregon — now require pesticide use reporting, Texas is not among them. Pesticide use data would enable regulators, farmers, and parents to make decisions based upon hard data rather than politics or speculation. Last year, a bill calling for a study on the feasibility of a statewide pesticide use reporting database failed to make it through the legislative process. In 2000, CU and others will continue to work to garner public and industry support for a more rational pesticide regulatory program that is based on the best information available.

A good amount of CU's work this year will include monitoring the activities of the Texas Structural Pest Control Board, particularly its enforcement of regulations requiring the use of Integrated Pest Management (IPM) in Texas schools. IPM uses the least toxic methods to control pests and stresses prevention, with the goal of protecting human health and the environment.

Consumers Union investigated seven independent school districts across Texas in 1999 to see how well they were implementing IPM. This sampling of school districts, on average, rated fair to poor in their implementation. CU uncovered evidence that school districts underreport the toxicity of the pesticides they use, and a few regularly waive standard safety requirements by deeming their applications to be emergencies.

Preserving and improving this law will remain a high priority.

Housing

Texas today suffers from a lack of safe, decent and affordable hous-



to make health insurance more affordable to people with low and moderate family incomes, and (2) strengthen our current health care safety net by eliminating barriers to Medicaid eligibility.

Community reinvestment in Texas

Last year, many Americans were exposed for the first time to the Community Reinvestment Act (CRA) during the congressional debate over the financial modernization bill. CRA is a federal law that requires banks and thrifts to make loans and invest in the communities in which they receive deposits. It has been used in Texas and across the nation as a mechanism for community groups to join with banks to develop

In 1999, CU received a grant from a nonprofit organization to examine how areas in east and west Texas are utilizing CRA. A consultant was hired to travel across Texas and research CRA "success stories". These stories provide a number of models for others who want to use the CRA to increase affordable housing or build communities.

Also, this spring Consumers Union will release a new analysis of home mortgage lending inequities in Texas. The new analysis, which will include three years of data, will be included in a report similar to CU's innovative 1998 report, *Access to the Dream*.

Pesticides and public safety

Environmental safety is a top concern for Consumers Union.

ing for those who earn less than the median income. Ineffective or unchecked programs exacerbate the housing problem. There have been several prominent examples of the private sector exploiting housing programs for its own profit without regard to serving those families who need housing. Although manufactured housing could be an affordable option for consumers, the industry is plagued with bad practices and high finance charges.

The Texas Department of Housing and Community Affairs — the agency which oversees housing — has been compounding the problem with scandals in recent years. This year, the department is undergoing sunset review. Consumers Union and other housing advocates are using this opportunity to advocate for basic reforms of the housing agency, including stronger direction and oversight of their use of public funds, specifically targeting resources to income groups in need, and better requirements for accountability by the TDHCA for money spent.

Also in 2000, CU will continue to advocate for passage of a state law governing rental agreements in manufactured housing parks, as a first step in the reform of laws and regulations governing manufactured housing. Currently, Texans who own their manufactured homes but lease their lots — such as units placed in manufactured housing parks — lack the basic tenant protections granted to other renters under Texas law. Park owners and operators are not presently required to offer a lease to these homeowners or show cause for eviction. Because it is difficult and impractical to pick up a home and move it, manufactured housing park residents now live at the whim of the park owners and operators.

Compounding the problem is the fact that one out of every three new housing units in Texas today is manufactured housing. The industry lobby is so powerful that reform in manufactured housing will be a long-term process. CU will be work-

ing with legislators this and next year to pass a bill giving manufactured home owners who lease their land basic tenant rights enjoyed by other renters in Texas.

Open records

The 1999 legislative session provided some gains for citizen access to government records. Now the battleground for increasing oversight of government and regulated industries and making records more accessible to Texans moves to the courts and state administrative agencies.

One success of the law was a requirement that every governmental entity post information regarding the public's rights and governmental entities' responsibilities for providing government records. Consumers Union recommended changes to make the notice more readable and comply with the intent of the law. Although the notice does not improve the substantive rights of citizens who request government

records, it will provide critical information both to them and to government records personnel about timelines, requirements, and the presumption of openness.

The Texas Attorney General is currently working on several interpretations of the open records law. Although the office is charged with this responsibility and routinely issues such decisions, this iteration will address a number of disputed matters. Consumers Union and its open records allies are submitting briefs to the Attorney General on these matters arguing for openness of government records. The statute itself requires liberal construction in favor of openness. We expect the Attorney General's office to issue its decisions within the next few months.

Finally, Consumers Union and other public interest organizations filed a brief with the Texas Supreme Court in support of public access to insurance redlining data. Please see full article on page 3. ♦



MEDICARE ALERT:

know your rights!

Texans who returned to original Medicare after losing Medicare HMO coverage in early January have until March 3 to exercise their right to "guaranteed issue" of certain Medicare supplement policies.

On January 1, 2000, about 31,000 Texans in 36 counties were affected when five HMOs pulled out of the Medicare market: Humana (Humana Gold or Gold Plus), HMO Blue (Senior Blue Northeast Texas), United Healthcare, Cigna and Healthfirst HMO East Texas Medical Plan.

People who did not sign up with another Medicare HMO were automatically

returned to original Medicare on January 1. However, original Medicare has a number of gaps in coverage that can exceed several hundred dollars for deductibles and co-payments. Medicare supplement (Medigap) insurance can be purchased to fill some of these gaps.

If you apply for Medigap coverage within 63 days after losing your Medicare HMO coverage because your HMO withdrew from Medicare, the insurance company to which you applied must sell you Medigap Plan A, B, C or F regardless of your medical condition. This right is called "guaranteed

issue." In addition, the Medigap insurance company cannot impose a waiting period for coverage of your pre-existing medical conditions or charge a higher rate because of your health history. Hang on to your Medicare HMO withdrawal letter as it is proof for qualifying for this "guaranteed issue" right.

Free one-on-one counseling to Medicare beneficiaries is available by calling 1-800-252-9240. They can answer any questions you might have about guaranteed issue for Medigap coverage. You will be routed to a local assistance program. ♦

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