

By: Oliverson

H.B. No. 700

A BILL TO BE ENTITLED

AN ACT

relating to creation of the Texas Health Insurance Exchange;
authorizing an assessment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 8, Insurance Code, is amended
by adding Chapter 1511 to read as follows:

CHAPTER 1511. TEXAS HEALTH INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1511.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the
exchange.

(2) "Exchange" means the Texas Health Insurance
Exchange.

(3) "Executive commissioner" means the executive
commissioner of the Health and Human Services Commission.

(4) "Qualified health plan" means a health benefit
plan that has been certified by the board as meeting the criteria
established under Section 1311(c), Patient Protection and
Affordable Care Act (42 U.S.C. Section 18031(c)).

(5) "Secretary" means the secretary of the United
States Department of Health and Human Services.

Sec. 1511.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In
this chapter, "health benefit plan" means an insurance policy,
insurance agreement, evidence of coverage, or other similar

1 coverage document that provides coverage for medical or surgical
2 expenses incurred as a result of a health condition, accident, or
3 sickness that is issued by:

4 (1) an insurance company;

5 (2) a group hospital service corporation operating
6 under Chapter 842;

7 (3) a health maintenance organization operating under
8 Chapter 843;

9 (4) an approved nonprofit health corporation that
10 holds a certificate of authority under Chapter 844;

11 (5) a multiple employer welfare arrangement that holds
12 a certificate of authority under Chapter 846;

13 (6) a stipulated premium company operating under
14 Chapter 884;

15 (7) a fraternal benefit society operating under
16 Chapter 885; or

17 (8) an exchange operating under Chapter 942.

18 (b) In this chapter, "health benefit plan" does not include:

19 (1) a plan that provides coverage:

20 (A) for wages or payments in lieu of wages for a
21 period during which an employee is absent from work because of
22 sickness or injury;

23 (B) as a supplement to a liability insurance
24 policy;

25 (C) for credit insurance;

26 (D) only for vision care;

27 (E) only for hospital expenses; or

- 1 (F) only for indemnity for hospital confinement;
2 (2) a Medicare supplemental policy as defined by
3 Section 1882(g)(1), Social Security Act (42 U.S.C. Section
4 1395ss(g)(1));
5 (3) a workers' compensation insurance policy; or
6 (4) medical payment insurance coverage provided under
7 a motor vehicle insurance policy.

8 Sec. 1511.003. TREATMENT OF EMPLOYERS. (a) For purposes of
9 this chapter, "small employer" means a person who employed at least
10 two, and an average of not more than 50 employees during the
11 preceding calendar year. This subsection expires December 31,
12 2025.

13 (b) All persons treated as a single employer under Section
14 414(b), (c), (m), or (o), Internal Revenue Code of 1986, are single
15 employers for purposes of this chapter.

16 (c) An employer and any predecessor employer are a single
17 employer for purposes of this chapter.

18 (d) In determining the number of employees of an employer
19 under this section, the number of employees:

20 (1) includes part-time employees and employees who are
21 not eligible for coverage through the employer; and

22 (2) for an employer that did not have employees during
23 the entire preceding calendar year, is the average number of
24 employees that the employer is reasonably expected to employ on
25 business days in the current calendar year.

26 (e) A small employer that makes enrollment in qualified
27 health plans available to its employees through the exchange and

1 ceases to be a small employer by reason of an increase in the number
2 of its employees continues to be a small employer for purposes of
3 this chapter as long as it continuously makes enrollment through
4 the exchange available to its employees.

5 Sec. 1511.004. RULEMAKING AUTHORITY. The board may adopt
6 rules necessary and proper to implement this chapter. Rules adopted
7 under this section may not conflict with or prevent the application
8 of regulations promulgated by the secretary under the Patient
9 Protection and Affordable Care Act (Pub. L. No. 111-148).

10 Sec. 1511.005. AGENCY COOPERATION. (a) The exchange, the
11 department, and the Health and Human Services Commission shall
12 cooperate fully in performing their respective duties under this
13 code or another law of this state relating to the operation of the
14 exchange.

15 (b) The exchange shall cooperate and coordinate with the
16 Health and Human Services Commission to facilitate a seamless user
17 experience.

18 Sec. 1511.006. EXEMPTION FROM STATE TAXES AND FEES. The
19 exchange is not subject to any state tax, regulatory fee, or
20 surcharge, including a premium or maintenance tax or fee.

21 Sec. 1511.007. COMPLIANCE WITH FEDERAL LAW. The exchange
22 shall comply with all applicable federal law and regulations.

23 Sec. 1511.008. EXEMPTION FROM STATE PURCHASING PROCEDURES.
24 The exchange is not subject to state purchasing or procurement
25 requirements under Subtitle D, Title 10, Government Code, or any
26 other law.

1 SUBCHAPTER B. ESTABLISHMENT AND GOVERNANCE

2 Sec. 1511.051. ESTABLISHMENT. The Texas Health Insurance
3 Exchange is established as an American Health Benefit Exchange and
4 a Small Business Health Options Program (SHOP) Exchange authorized
5 and required by Section 1311, Patient Protection and Affordable
6 Care Act (42 U.S.C. Section 18031).

7 Sec. 1511.052. GOVERNANCE OF EXCHANGE; BOARD MEMBERSHIP.

8 (a) The exchange is governed by a board of directors.

9 (b) The board consists of 11 members as follows:

10 (1) five members appointed by the governor, two of
11 whom have experience in the health insurance industry;

12 (2) three additional members appointed by the governor
13 from a list of nominees submitted by the speaker of the house of
14 representatives; and

15 (3) three members appointed by the lieutenant
16 governor.

17 (c) In making appointments or nominations under this
18 section, the governor, lieutenant governor, and speaker of the
19 house of representatives shall attempt to make appointments and
20 nominations that increase the board's diversity of expertise.

21 Sec. 1511.053. PRESIDING OFFICER. The board shall annually
22 designate one member of the board to serve as presiding officer.

23 Sec. 1511.054. TERMS; VACANCY. (a) Appointed members of
24 the board serve two-year terms, with the members' terms expiring
25 February 1 of each odd-numbered year.

26 (b) The appropriate appointing authority shall fill a
27 vacancy on the board by appointing, for the unexpired term, an

1 individual who has the appropriate qualifications to fill that
2 position.

3 Sec. 1511.055. CONFLICT OF INTEREST. (a) Any board member
4 or a member of a committee formed by the board with a direct
5 interest in a matter, personally or through an employer, before the
6 board shall abstain from deliberations and actions on the matter in
7 which the conflict of interest arises and shall further abstain
8 from any vote on the matter, and may not otherwise participate in a
9 decision on the matter.

10 (b) Each board member shall file a conflict of interest
11 statement and a statement of ownership interests with the board to
12 ensure disclosure of all existing and potential personal interests
13 related to board business.

14 (c) A member of the board or of the staff of the exchange may
15 not be employed by, affiliated with, a consultant to, a member of
16 the board of directors of, or otherwise a representative of a health
17 benefit plan issuer or other insurer, an agent or broker, a health
18 care provider, or a health care facility or health clinic while
19 serving on the board or on the staff of the exchange.

20 (d) A member of the board or of the staff of the exchange may
21 not be a member, a board member, or an employee of a trade
22 association of health benefit plan issuers, health facilities,
23 health clinics, or health care providers while serving on the board
24 or on the staff of the exchange.

25 (e) A member of the board or of the staff of the exchange may
26 not be a health care provider unless the member receives no
27 compensation for rendering services as a health care provider and

1 does not have an ownership interest in a professional health care
2 practice.

3 Sec. 1511.056. GENERAL DUTIES OF BOARD MEMBERS. (a) Each
4 board member has the responsibility and duty to meet the
5 requirements of this title and applicable state and federal laws
6 and regulations, to serve the public interest of the individuals
7 and small businesses seeking health benefit plan coverage through
8 the exchange, and to ensure the operational well-being and fiscal
9 solvency of the exchange.

10 (b) A member of the board may not make, participate in
11 making, or in any way attempt to use the board member's official
12 position to influence the making of any decision that the board
13 member knows or has reason to know will have a material financial
14 effect, distinguishable from its effect on the public generally, on
15 the board member or the board member's immediate family, or on:

16 (1) any source of income, other than gifts and loans by
17 a commercial lending institution in the regular course of business
18 on terms available to the public generally, aggregating \$250 or
19 more in value, provided or promised to the member within the 12
20 months immediately preceding the date the decision is made; or

21 (2) any business entity in which the member is a
22 director, officer, partner, trustee, or employee, or holds any
23 position of management.

24 Sec. 1511.057. REIMBURSEMENT. A member of the board is not
25 entitled to compensation but is entitled to reimbursement for
26 travel or other expenses incurred while performing duties as a
27 board member in the amount provided by the General Appropriations

1 Act for state officials.

2 Sec. 1511.058. MEMBER'S IMMUNITY. (a) A member of the
3 board is not liable for an act or omission made in good faith in the
4 performance of powers and duties under this chapter.

5 (b) A cause of action does not arise against a member of the
6 board for an act or omission described by Subsection (a).

7 Sec. 1511.059. OPEN RECORDS AND OPEN MEETINGS. The board is
8 subject to Chapters 551 and 552, Government Code.

9 Sec. 1511.060. RECORDS. The board shall keep records of the
10 board's proceedings for at least seven years.

11 SUBCHAPTER C. POWERS AND DUTIES OF EXCHANGE

12 Sec. 1511.101. EMPLOYEES; COMMITTEES. (a) The board may
13 employ an executive director and any other agents and employees
14 that the board considers necessary to assist the exchange in
15 carrying out its responsibilities and functions.

16 (b) The executive director shall organize, administer, and
17 manage the operations of the exchange. The executive director may
18 hire other employees as necessary to carry out the responsibilities
19 of the exchange.

20 (c) The exchange may appoint appropriate legal, actuarial,
21 and other committees necessary to provide technical assistance in
22 operating the exchange and performing any of the functions of the
23 exchange.

24 Sec. 1511.102. ADVISORY COMMITTEE. The board may appoint
25 an advisory committee to allow for the involvement of the health
26 care and health insurance industries and other stakeholders in the
27 operation of the exchange. The advisory committee may provide

1 expertise and recommendations to the board but may not adopt rules
2 or enter into contracts on behalf of the exchange.

3 Sec. 1511.103. CONTRACTS. (a) Except as provided by
4 Subsection (b), the exchange may enter into any contract that the
5 exchange considers necessary to implement or administer this
6 chapter, including a contract with the department, the Health and
7 Human Services Commission, or an entity that has experience in
8 individual and small group health insurance, benefit
9 administration, or other experience relevant to the
10 responsibilities assumed by the entity, to perform functions or
11 provide services in connection with the operation of the exchange.

12 (b) This exchange may not enter into a contract with a
13 health benefit plan issuer under this section.

14 Sec. 1511.104. INFORMATION SHARING AND CONFIDENTIALITY.
15 The exchange may enter into information-sharing agreements with
16 federal and state agencies to carry out the exchange's
17 responsibilities under this chapter. An agreement entered into
18 under this section must include adequate protection with respect to
19 the confidentiality of any information shared and comply with all
20 applicable state and federal law.

21 Sec. 1511.105. MEMORANDUM OF UNDERSTANDING. The exchange
22 shall enter into a memorandum of understanding with the department
23 and the Health and Human Services Commission regarding the exchange
24 of information and the division of regulatory functions among the
25 exchange, the department, and the commission.

26 Sec. 1511.106. LEGAL ACTION. (a) The exchange may sue or
27 be sued.

1 (b) The exchange may take any legal action necessary to
2 recover or collect amounts due the exchange, including:

3 (1) assessments due the exchange;

4 (2) amounts erroneously or improperly paid by the
5 exchange; and

6 (3) amounts paid by the exchange as a mistake of fact
7 or law.

8 Sec. 1511.107. FUNCTIONS. The exchange shall perform all
9 functions and duties related to state-based exchanges required by
10 applicable state and federal law.

11 Sec. 1511.108. HEALTH CARE PROVIDER DIRECTORY AND
12 INFORMATION. (a) The exchange may provide an integrated and
13 uniform consumer directory of health care providers indicating
14 which health benefit plan issuers the providers contract with and
15 whether the providers are currently accepting new patients.

16 (b) The exchange may establish methods by which health care
17 providers may transmit relevant information directly to the
18 exchange, rather than through an issuer.

19 Sec. 1511.109. STATE-ADMINISTERED SUBSIDY PROGRAM. (a) Not
20 later than July 1, 2024, the exchange, in coordination with the
21 department, shall review and make recommendations to the Senate
22 Business and Commerce Committee and the House of Representatives
23 Insurance Committee regarding the feasibility of implementing a
24 state-administered subsidy program for individuals, families, and
25 small employers to purchase health benefit plan coverage.

26 (b) With the input and approval of the Senate Business and
27 Commerce Committee and the House of Representatives Insurance

1 Committee, the exchange may develop and implement a
2 state-administered subsidy program.

3 Sec. 1511.110. FEDERAL WAIVERS. (a) Not later than July 1,
4 2024, the exchange, in coordination with the department, shall
5 review and make recommendations to the Senate Business and Commerce
6 Committee and the House of Representatives Insurance Committee
7 regarding the submission of a state innovation waiver that may be
8 granted under Section 1332, Patient Protection and Affordable Care
9 Act (42 U.S.C. Section 18052), with respect to health benefit plan
10 coverage or health insurance products in this state, including
11 recommendations on:

12 (1) risk stabilization strategies aimed at addressing
13 risk associated with individuals with high health care costs;

14 (2) individual coverage health reimbursement
15 arrangements for employees of large and small businesses in this
16 state;

17 (3) financial assistance for different types of health
18 benefit plan coverage, including non-qualified health plans for
19 individuals purchasing coverage; and

20 (4) the establishment of account-based premium
21 credits for individuals and families enrolled in coverage through
22 the exchange.

23 (b) With the input and approval of the Senate Business and
24 Commerce Committee and the House of Representatives Insurance
25 Committee, the exchange may submit one or more applications to the
26 secretary to obtain a waiver of any applicable provisions of the
27 Patient Protection and Affordable Care Act (Pub. L. No. 111-148).

1 (c) On approval by the secretary of a waiver under
2 Subsection (b), the exchange may implement the approved waiver.

3 SUBCHAPTER D. ASSESSMENTS FOR OPERATION OF EXCHANGE

4 Sec. 1511.151. ASSESSMENTS. (a) The exchange may charge
5 the issuers of health benefit plans in this state, including
6 qualified health plans, an assessment as reasonable and necessary
7 to cover the exchange's organizational and operating expenses and
8 expenses related to health coverage programs associated with the
9 exchange. Assessments must be determined annually. The exchange
10 may charge interest for late assessments.

11 (b) The commissioner shall adopt rules to implement and
12 enforce the assessment of health benefit plan issuers under this
13 section.

14 Sec. 1511.152. GRANTS AND FEDERAL FUNDS. (a) The exchange
15 may accept a grant from a public or private organization and may
16 spend those funds to pay the costs of program administration and
17 operations.

18 (b) The exchange may accept federal funds and shall use
19 those funds in compliance with applicable federal law, regulations,
20 and guidelines.

21 Sec. 1511.153. USE OF EXCHANGE ASSETS; ANNUAL REPORT. (a)
22 The assets of the exchange may be used only to pay the costs:

23 (1) of the administration and operation of the
24 exchange; and

25 (2) associated with any health coverage programs
26 associated with the exchange.

27 (b) The exchange shall prepare annually a complete and

1 detailed written report accounting for all funds received and
2 disbursed by the exchange during the preceding fiscal year. The
3 report must meet any reporting requirements provided in the General
4 Appropriations Act, regardless of whether the exchange receives any
5 funds under that Act. The exchange shall submit the report to the
6 governor, the legislature, the commissioner, and the executive
7 commissioner not later than January 31 of each year.

8 (c) General revenue may not be appropriated for the
9 exchange.

10 Sec. 1511.154. PUBLICATION OF FINANCIAL INFORMATION. The
11 exchange shall publish the average costs of licensing, regulatory
12 fees, and any other payments required by the exchange, and the
13 administrative costs of the exchange, on an Internet website to
14 educate consumers on those costs. This information must include
15 information on losses due to waste, fraud, and abuse.

16 SUBCHAPTER E. TRUST FUND

17 Sec. 1511.201. TRUST FUND. (a) The exchange fund is
18 established as a special trust fund outside of the state treasury in
19 the custody of the comptroller separate and apart from all public
20 money or funds of this state.

21 (b) The exchange may deposit assessments, gifts or
22 donations, and any federal funding obtained by the exchange in the
23 exchange fund in accordance with procedures established by the
24 comptroller.

25 (c) Interest or other income from the investment of the fund
26 shall be deposited to the credit of the fund.

27 SECTION 2. Effective January 1, 2026, Section 1511.003,

1 Insurance Code, as added by this Act, is amended by adding
2 Subsection (a-1) to read as follows:

3 (a-1) For purposes of this chapter, "small employer" means a
4 person who employed an average of not more than 100 employees during
5 the preceding calendar year.

6 SECTION 3. (a) As soon as practicable after the effective
7 date of this Act, but not later than October 31, 2023, the governor
8 and lieutenant governor shall appoint the initial members of the
9 board of directors of the Texas Health Insurance Exchange.

10 (b) As soon as practicable after the appointments required
11 by Subsection (a) of this section are made, but not later than
12 November 30, 2023, the board of directors of the Texas Health
13 Insurance Exchange shall hold a special meeting to discuss the
14 adoption of rules and procedures necessary to implement Chapter
15 1511, Insurance Code, as added by this Act.

16 (c) As soon as practicable after the effective date of this
17 Act, but not later than January 31, 2024, the board of directors of
18 the Texas Health Insurance Exchange shall adopt rules and
19 procedures necessary to implement Chapter 1511, Insurance Code, as
20 added by this Act.

21 (d) If, after the effective date of this Act but before the
22 initial members of the board of directors of the Texas Health
23 Insurance Exchange have been appointed as required by Subsection
24 (a) of this section, the Texas Department of Insurance becomes
25 aware of any planning and establishment grants as described by
26 Section 1311, Patient Protection and Affordable Care Act (42 U.S.C.
27 Section 18031), or any other public or private funding source, the

1 department may apply for funding from that source.

2 (e) The exchange may not begin operations without adequate
3 funding.

4 (f) The board of directors of the Texas Health Insurance
5 Exchange may adopt rules on an emergency basis in accordance with
6 Section 2001.034, Government Code. Notwithstanding Section
7 2001.034(c), Government Code, a rule adopted under this subsection
8 may remain in effect until January 1, 2027. Rules adopted under
9 this subsection shall be deemed necessary for the immediate
10 preservation of the public peace, health, safety, and general
11 welfare and an additional finding under Sections 2001.034(a)(1) and
12 (2), Government Code, is not required. The authority to adopt rules
13 under this subsection expires January 1, 2027.

14 SECTION 4. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2023.