

By: Gallego

H.B. No. 1939

A BILL TO BE ENTITLED

AN ACT

relating to health care benefit mandates and offer of coverage mandates.

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

SECTION 1. Title 1, Insurance Code, is amended by adding Chapter 28 to read as follows:

CHAPTER 28. ASSESSMENT OF HEALTH CARE BENEFIT AND OFFER OF
COVERAGE MANDATES

SUBCHAPTER A. GENERAL PROVISIONS

Art. 28.001. GENERAL DEFINITIONS. In this chapter:

(1) "Certified actuary" means:

(A) a fellow of the Society of Actuaries;

(B) a fellow of the Casualty Actuarial Society;

or

(C) a member of the American Academy of

Actuaries.

(2) "Health care benefit mandate" means a state law that requires a health benefit plan to provide coverage or reimbursement for a specific health care service, treatment, or procedure, a specific medical condition or illness, or a particular group of people who would otherwise be excluded, or to reimburse a specific type of health care provider directly or in a specific amount. The term does not include an offer of coverage mandate.

(3) "Offer of coverage mandate" means a state law that

1 requires a health benefit plan to offer as part of the plan's
2 benefit schedule coverage that may be rejected by the contract
3 holder and for which an additional premium may be charged.

4 Art. 28.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In
5 this chapter, "health benefit plan" means a plan that provides
6 benefits for medical or surgical expenses incurred as a result of a
7 health condition, accident, or sickness, including an individual,
8 group, blanket, or franchise insurance policy or insurance
9 agreement, a group hospital service contract, or an individual or
10 group evidence of coverage or similar coverage document that is
11 offered by:

12 (1) an insurance company;

13 (2) a group hospital service corporation operating
14 under Chapter 842 of this code;

15 (3) a fraternal benefit society operating under
16 Chapter 885 of this code;

17 (4) a stipulated premium insurance company operating
18 under Chapter 884 of this code;

19 (5) an exchange operating under Chapter 942 of this
20 code;

21 (6) a health maintenance organization operating under
22 Chapter 843 of this code;

23 (7) a multiple employer welfare arrangement that holds
24 a certificate of authority under Chapter 846 of this code;

25 (8) an approved nonprofit health corporation that
26 holds a certificate of authority under Chapter 844 of this code; or

27 (9) a Lloyd's plan operating under Chapter 941 of this

1 code.

2 (b) "Health benefit plan" does not include:

3 (1) a plan that provides coverage only:

4 (A) for benefits for a specified disease or for
5 another limited benefit other than for cancer;

6 (B) for accidental death or dismemberment;

7 (C) for wages or payments in lieu of wages for a
8 period during which an employee is absent from work because of
9 sickness or injury;

10 (D) as a supplement to a liability insurance
11 policy;

12 (E) for credit insurance;

13 (F) for dental or vision care; or

14 (G) for indemnity for hospital confinement;

15 (2) a Medicare supplemental policy as defined by
16 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss),
17 as amended;

18 (3) a workers' compensation insurance policy;

19 (4) medical payment insurance coverage provided under
20 a motor vehicle insurance policy; or

21 (5) a long-term care insurance policy, including a
22 nursing home fixed indemnity policy, unless the commissioner
23 determines that the policy provides benefit coverage so
24 comprehensive that the policy is a health benefit plan as described
25 by Subsection (a) of this article.

26 [Articles 28.003-28.050 reserved for expansion]

27 SUBCHAPTER B. IMPACT ASSESSMENT OF PROPOSED MANDATE

BY LEGISLATIVE BUDGET BOARD

1 Art. 28.051. REQUEST FOR IMPACT ASSESSMENT. If the chair of
2 a standing committee of the legislature determines that a bill
3 would, if enacted, create a health care benefit mandate or an offer
4 of coverage mandate, the chair shall send a copy of the bill to the
5 Legislative Budget Board and request that an impact assessment of
6 the mandate be prepared.

7 Art. 28.052. PREPARATION OF IMPACT ASSESSMENT; ACTUARIAL
8 ASSISTANCE REQUIRED. (a) On receipt of a bill under Article 28.051
9 of this code, the Legislative Budget Board shall prepare a written
10 impact assessment of the mandate in accordance with this
11 subchapter.

12 (b) In preparing an impact assessment, the director of the
13 Legislative Budget Board may:

14 (1) use any information supplied by any person,
15 agency, organization, or governmental unit that the director
16 determines is reliable; and

17 (2) obtain assistance in preparing the assessment from
18 any state agency or by contract with a private entity.

19 (c) The Legislative Budget Board shall obtain the
20 assistance of at least one certified actuary who is qualified to
21 provide an opinion relating to an impact assessment under this
22 subchapter.

23 (d) An impact assessment prepared under this subchapter
24 must include:

25 (1) any report relating to the mandate produced by an
26 actuary or other expert retained by the Legislative Budget Board;
27

1 and

2 (2) a description of all underlying assumptions, data,
3 and studies on which the evaluation was based.

4 (e) The director of the Legislative Budget Board shall
5 submit an impact assessment requested under Article 28.051 of this
6 code not later than the 21st day after the date of the request.

7 Art. 28.053. CONTENTS OF IMPACT ASSESSMENT. (a) An impact
8 assessment of a health care benefit mandate or offer of coverage
9 mandate prepared under this subchapter must include, as applicable:

10 (1) the level of demand in the state for the coverage
11 that is the subject of the mandate, including the number and
12 percentage of people in the state who are affected by the medical
13 condition or illness that is the subject of the mandate or who would
14 be likely to use the coverage that is the subject of the mandate;

15 (2) the extent to which the coverage is available
16 under health benefit plans that are in effect at the time the impact
17 assessment is made;

18 (3) the extent to which any health care service,
19 treatment, or procedure that would be required under the mandate
20 would be available in the absence of health benefit plan coverage;

21 (4) the epidemiological impact and medical efficacy of
22 the health care service, treatment, or procedure, including the
23 impact of the service, treatment, or procedure on an individual's
24 health status and the effect on an individual's health status of not
25 providing the service, treatment, or procedure;

26 (5) the direct impact of the mandate on health benefit
27 plan premiums;

1 (6) the net impact of the mandate on premiums,
2 considering the extent to which the coverage is already provided
3 under health benefit plans that are in effect at the time the impact
4 assessment is made and the extent to which other costs are offset by
5 the mandate;

6 (7) the costs to an individual of obtaining the health
7 care service, treatment, or procedure in the absence of health
8 benefit plan coverage;

9 (8) the fiscal impact on the state associated with
10 enacting the mandate and with not enacting the mandate;

11 (9) the impact on the economy and society of not
12 providing the health care service, treatment, or procedure;

13 (10) the impact of the health care service, treatment,
14 or procedure on the use of sick days and disability costs;

15 (11) the relative quality and cost-efficiency of the
16 care that is the subject of the mandate in the absence of health
17 benefit plan coverage; and

18 (12) a description of the extent to which the health
19 care benefit mandate or offer of coverage mandate is required by
20 federal law and the consequences of not enacting a mandate that
21 includes the minimum requirements of the federal law.

22 (b) For an offer of coverage mandate, the impact assessment
23 must also estimate the difference in the cost of a health benefit
24 plan that provides the coverage and a comparable health benefit
25 plan that does not provide the coverage.

26 (c) For a health care benefit mandate, the impact assessment
27 must also estimate the impact of the mandate if the mandate was an

1 offer of coverage mandate.

2 (d) An impact assessment must provide a separate analysis of
3 the cost to the Employees Retirement System of Texas of providing
4 the coverage that is the subject of the mandate being assessed to
5 the population covered by the uniform group insurance program or a
6 successor program, even if the program would not be subject to the
7 mandate.

8 (e) An impact assessment must provide a separate analysis of
9 the costs of the health benefit plan mandate or offer of coverage
10 mandate for:

11 (1) group health benefit plans, collectively and
12 according to the type of plan;

13 (2) individual health benefit plans; and

14 (3) small employer health benefit plans written under
15 Chapter 26 of this code, even if those plans would not be subject to
16 the mandate.

17 Art. 28.054. IMPACT ASSESSMENT IN CERTAIN CIRCUMSTANCES.

18 If the director of the Legislative Budget Board determines that the
19 impact of a proposed health benefit plan mandate or offer of
20 coverage mandate cannot be fully ascertained or the director is
21 unable to acquire or develop sufficient information to prepare a
22 complete impact assessment within 21 days of receiving the bill
23 from the chair of a committee, the director shall:

24 (1) report that fact in writing to the chair of the
25 committee; and

26 (2) prepare an impact assessment that:

27 (A) complies as much as possible with the

1 requirements of Article 28.053 of this code; and

2 (B) explains which of the applicable
3 requirements of that article are not met and why they are not met.

4 Art. 28.055. DISTRIBUTION OF IMPACT ASSESSMENT. Copies of
5 an impact assessment prepared under this subchapter must be
6 distributed to the members of the committee before the committee
7 votes on the bill to which the assessment relates. The assessment
8 shall be attached to the bill on first printing. If the bill is
9 amended by the committee in a way that alters a mandate, the chair
10 shall obtain an updated impact assessment, which shall also be
11 attached to the bill on first printing.

12 Art. 28.056. IMPACT ASSESSMENT REMAINS WITH BILL. An
13 impact assessment prepared under this subchapter shall remain with
14 the bill to which the assessment relates throughout the entire
15 legislative process, including submission to the governor.

16 [Articles 28.057-28.100 reserved for expansion]

17 SUBCHAPTER C. ASSESSMENT OF ENACTED MANDATE BY SUNSET

18 ADVISORY COMMISSION; EXPIRATION OF MANDATE

19 Art. 28.101. DEFINITION. In this subchapter, "review date"
20 means the review date assigned by the commissioner to a health care
21 benefit mandate or offer of coverage mandate under Article 28.103
22 of this code.

23 Art. 28.102. APPLICABILITY OF SUBCHAPTER. This subchapter
24 applies to a health care benefit mandate or offer of coverage
25 mandate provided for:

26 (1) in a statute; or

27 (2) in a rule adopted by the commissioner.

1 Art. 28.103. REVIEW DATES. (a) The commissioner shall
2 assign a review date to each health care benefit mandate or offer of
3 coverage mandate.

4 (b) In assigning review dates, the commissioner shall:

5 (1) consider the amount of time a mandate has been in
6 effect and whether the mandate has been substantially amended since
7 the mandate became effective; and

8 (2) except as provided by Subsection (c) of this
9 article, and to the extent possible while complying with Subsection
10 (d) of this article, assign review dates to mandates according to
11 the amount of time the mandates have been in effect in substantially
12 the same form, with the mandates that have been in effect in
13 substantially the same form for the longest period having the
14 earliest review dates.

15 (c) The commissioner may assign the same review date to
16 mandates that are substantially similar or substantively related to
17 each other.

18 (d) Except as provided by this subsection, the commissioner
19 may not assign the same review date to more than five mandates. If
20 the commissioner assigns the same review date to mandates that are
21 substantially similar or substantively related to each other, the
22 commissioner may count those mandates as one mandate for the
23 purposes of this subsection.

24 (e) The review date:

25 (1) must be September 1 of an even-numbered year; and

26 (2) may not be earlier than September 1 of the
27 even-numbered year following the fifth anniversary of the date the

1 mandate is adopted.

2 (f) Notwithstanding Subsection (e) of this article, for a
3 mandate that was adopted on or before September 1, 2001, the review
4 date may not be earlier than September 1, 2006. This subsection
5 expires December 31, 2007.

6 Art. 28.104. ASSESSMENT OF MANDATE. (a) Before the review
7 date for a health care benefit mandate or an offer of coverage
8 mandate, the Sunset Advisory Commission shall:

9 (1) review and take action necessary to verify the
10 reports relating to the mandate submitted by the department and the
11 Texas Department of Health under Article 28.156 of this code;

12 (2) conduct an assessment of the mandate based on the
13 criteria provided by Article 28.107 of this code and prepare a
14 written report; and

15 (3) review any prior commission recommendations
16 relating to the mandate in reports presented to the legislature
17 under this subchapter in a preceding legislative session.

18 (b) A report prepared by the Sunset Advisory Commission
19 under this article is a public record.

20 Art. 28.105. PUBLIC HEARINGS. (a) Between the review date
21 for a health care benefit mandate or offer of coverage mandate and
22 December 1 of the calendar year in which the review date occurs, the
23 Sunset Advisory Commission shall conduct public hearings
24 concerning the assessment of the mandate provided by Article 28.107
25 of this code.

26 (b) The Sunset Advisory Commission may hold public hearings
27 under this article before the review date if the report required

1 under Article 28.104 is complete and available to the public.

2 Art. 28.106. REPORT; RECOMMENDATION. (a) Not later than
3 January 1 of the year of a regular legislative session, the Sunset
4 Advisory Commission shall present to the legislature and the
5 governor a report on each health care benefit mandate or offer of
6 coverage mandate that was assessed under this subchapter during the
7 previous year.

8 (b) In the report the Sunset Advisory Commission shall
9 include:

10 (1) the specific findings of the commission regarding
11 each of the criteria considered under Article 28.107 of this code;

12 (2) recommendations of the commission regarding
13 whether the mandate should be continued, modified, or repealed; and

14 (3) any other information the commission considers
15 necessary for a complete assessment of the mandate.

16 Art. 28.107. CRITERIA FOR ASSESSMENT. (a) The Sunset
17 Advisory Commission and the commission's staff, in determining
18 whether a health care benefit mandate or an offer of coverage
19 mandate should be continued, modified, or repealed, shall consider,
20 as applicable:

21 (1) the level of demand in the state for the coverage
22 that is the subject of the mandate, including the number and
23 percentage of people, statewide and among distinct population
24 groups, who are affected by the medical condition or illness that is
25 the subject of the mandate or who use the coverage that is the
26 subject of the mandate;

27 (2) the extent to which any health care service,

1 treatment, or procedure that would be required under the mandate
2 would be available in the absence of health benefit plan coverage;

3 (3) the epidemiological impact and medical efficacy of
4 the health care service, treatment, or procedure, including the
5 impact of the service, treatment, or procedure on an individual's
6 health status and the effect on an individual's health status of not
7 providing the service, treatment, or procedure;

8 (4) the direct impact of the mandate on health benefit
9 plan premiums;

10 (5) the net impact of the mandate on premiums,
11 considering the extent to which other costs are offset by the
12 mandate;

13 (6) the costs to an individual of obtaining the health
14 care service, treatment, or procedure in the absence of health
15 benefit plan coverage;

16 (7) the fiscal impact on the state associated with
17 continuing the mandate and with repealing the mandate;

18 (8) the impact on the economy and society of not
19 providing the health care service, treatment, or procedure;

20 (9) the impact of the health care service, treatment,
21 or procedure on the use of sick days and disability costs;

22 (10) the relative quality and cost-efficiency of the
23 care that is the subject of the mandate in the absence of health
24 benefit plan coverage; and

25 (11) the extent to which the mandate being assessed is
26 required by federal law and the consequences of repealing the
27 mandate or continuing the mandate in a form that does not include

1 the minimum requirements of the federal law.

2 (b) In considering a mandate's impact on health benefit plan
3 premiums under Subsection (a) of this article, the Sunset Advisory
4 Commission and the commission's staff shall, if applicable, provide
5 a separate analysis of the impact of a health care benefit mandate
6 or offer of coverage mandate on:

7 (1) group health benefit plans collectively and
8 according to the type of plan;

9 (2) individual health benefit plans; and

10 (3) small employer health benefit plans written under
11 Chapter 26 of this code.

12 Art. 28.108. PREPARATION OF REPORT; ACTUARIAL ASSISTANCE
13 REQUIRED. (a) The Sunset Advisory Commission may contract with any
14 person to provide actuarial, medical, or economic expertise or
15 other expertise or services as necessary to allow the commission to
16 prepare a report required under this subchapter.

17 (b) The Sunset Advisory Commission shall obtain the
18 assistance of at least one certified actuary who is qualified to
19 provide an opinion relating to a report under this subchapter.

20 Art. 28.109. CONTINUATION OF MANDATE. (a) A health care
21 benefit mandate or offer of coverage mandate shall continue in
22 effect until such time as the legislature acts on the
23 recommendation of the commission according to Article 28.106 of
24 this code.

25 (b) A health care benefit mandate or offer of coverage
26 mandate reviewed under this subchapter may not be assigned a
27 subsequent review date that is earlier than the 12th anniversary of

1 the preceding review date.

2 (c) A mandate may be modified at the time the mandate is
3 continued.

4 (d) This subchapter does not prohibit the legislature from:

5 (1) repealing a health care benefit mandate or offer
6 of coverage mandate; or

7 (2) considering any other legislation relating to a
8 mandate.

9 [Articles 28.110-28.150 reserved for expansion]

10 SUBCHAPTER D. COLLECTION AND REPORTING OF DATA

11 Art. 28.151. DEFINITION OF LARGE HEALTH BENEFIT PLAN
12 CARRIER. The commissioner by rule shall define "large health
13 benefit plan carrier" for the purposes of Article 28.152 of this
14 code. The commissioner shall obtain the assistance of the advisory
15 committee established under Article 28.153 of this code in
16 formulating the definition. The definition must:

17 (1) be based on the carrier's premium volume or number
18 of enrollees covered by the carrier's plans; and

19 (2) describe a sufficient number of carriers to
20 fulfill the purposes of this subchapter, but not less than the
21 lesser of:

22 (A) 15 carriers; or

23 (B) all carriers operating in this state.

24 Art. 28.152. REQUIRED INFORMATION. (a) The commissioner
25 by rule shall require each large health benefit plan carrier and the
26 Employees Retirement System of Texas to submit annually information
27 that the commissioner, with the assistance of the advisory

1 committee established under Article 28.153 of this code, determines
2 is necessary for the assessment of health care benefit mandates and
3 offer of coverage mandates under this chapter.

4 (b) A large health benefit plan carrier shall submit
5 information required by the commissioner under this article.

6 (c) The Employees Retirement System of Texas shall submit
7 information required by the commissioner under this article.

8 Art. 28.153. ADVISORY COMMITTEE. (a) The commissioner
9 shall appoint an advisory committee of at least seven and not more
10 than 11 members to assist the department in implementing this
11 subchapter.

12 (b) The members of the committee must include at least one
13 representative from each of the following groups or entities:

14 (1) large health benefit plan carriers that are
15 insurers;

16 (2) large health benefit plan carriers that are health
17 maintenance organizations;

18 (3) consumers;

19 (4) health care providers;

20 (5) the Texas Department of Health; and

21 (6) the Texas Health Care Information Council.

22 (c) The committee must also include members who have
23 demonstrated actuarial, economic, and information systems
24 expertise.

25 (d) The committee shall work with the department to ensure
26 that:

27 (1) data collected under this subchapter is

1 sufficient to properly evaluate each health care benefit mandate
2 and offer of coverage mandate under Subchapter C of this chapter;

3 (2) compliance with requests for data made under this
4 subchapter is both feasible for health benefit plan carriers and as
5 cost-effective as possible; and

6 (3) to the extent possible, data collection formats
7 under this subchapter are compatible with data collection formats
8 required under Section 221(a), Health Insurance Portability and
9 Accountability Act of 1996 (42 U.S.C. Section 1320a-7e).

10 (e) Chapter 2110, Government Code, applies to the advisory
11 committee created under this article.

12 Art. 28.154. CERTAIN INFORMATION EXCLUDED. The department
13 may not collect information under this subchapter that could
14 reasonably be expected to reveal the identity of a patient or a
15 health care provider other than a hospital.

16 Art. 28.155. APPLICABILITY OF OPEN RECORDS LAW.
17 Information submitted under this subchapter by an individual health
18 benefit plan carrier is not subject to disclosure under Chapter
19 552, Government Code. The department shall aggregate information
20 submitted by all health benefit plan carriers under this
21 subchapter, and that aggregated information is subject to
22 disclosure under Chapter 552, Government Code.

23 Art. 28.156. REPORTING OF DATA. (a) Before July 1 of the
24 calendar year in which the review date assigned to a health care
25 benefit mandate or an offer of coverage mandate under Article
26 28.103 of this code occurs:

27 (1) the department shall report to the Sunset Advisory

1 Commission:

2 (A) information regarding the costs associated
3 with the mandate, including the claims paid under health benefit
4 plans that are related to the mandate and the premiums charged for
5 coverage required by the mandate; and

6 (B) any other information that the commissioner
7 considers appropriate or that is requested by the Sunset Advisory
8 Commission to the extent that the information is available; and

9 (2) the Texas Department of Health shall report to the
10 Sunset Advisory Commission:

11 (A) information regarding the epidemiological
12 impact and the medical efficacy of the coverage required by the
13 mandate, if applicable; and

14 (B) any other information that the commissioner
15 of public health considers appropriate or that is requested by the
16 Sunset Advisory Commission.

17 (b) The department and the Texas Department of Health shall
18 provide, to the extent the information is available to the agency,
19 any information requested by the Legislative Budget Board for the
20 purpose of preparing an impact assessment under Subchapter B of
21 this chapter.

22 SECTION 2. Subchapter F, Chapter 38, Insurance Code, as
23 added by Chapter 852, Acts of the 77th Legislature, Regular
24 Session, 2001, is repealed.

25 SECTION 3. (a) This Act takes effect September 1, 2003.

26 (b) Not later than December 1, 2003, the commissioner of
27 insurance shall appoint all members to the advisory committee

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1 authorized under Article 28.153, Insurance Code, as added by this
2 Act. Not later than June 1, 2004, the commissioner of insurance
3 shall adopt rules as necessary to implement Subchapters C and D,
4 Chapter 28, Insurance Code, as added by this Act.