

By: Nelson

S.B. No. 431

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

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

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

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

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

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

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

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

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

1 and

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

4 (e) Not later than the 21st day after the date the
5 Legislative Budget Board receives a request for an impact
6 assessment under Article 28.051 of this code, the director of the
7 board shall submit the impact assessment to the chair of the
8 committee making the request.

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

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

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

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

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

1 (5) the direct impact of the mandate on health benefit
2 plan premiums;

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

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

11 (8) the fiscal impact on the state associated with
12 enacting the mandate and with not enacting the mandate;

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

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

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

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

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

1 (c) For a health care benefit mandate, the impact assessment
2 must also estimate the impact of the mandate if the mandate was an
3 offer of coverage mandate.

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

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

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

15 (2) individual health benefit plans; and

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

19 Art. 28.054. IMPACT ASSESSMENT IN CERTAIN
20 CIRCUMSTANCES. If the director of the Legislative Budget Board
21 determines that the impact of a proposed health benefit plan
22 mandate or offer of coverage mandate cannot be fully ascertained or
23 the director is unable to acquire or develop sufficient information
24 to prepare a complete impact assessment within the time prescribed
25 by Article 28.052(e) of this code, the director shall:

26 (1) report that fact in writing to the chair of the
27 committee requesting the impact assessment; and

1 (2) prepare an impact assessment that:

2 (A) complies as much as possible with the
3 requirements of Article 28.053 of this code; and

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

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

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

18 [Articles 28.057-28.100 reserved for expansion]

19 SUBCHAPTER C. ASSESSMENT OF ENACTED MANDATE BY SUNSET ADVISORY
20 COMMISSION; EXPIRATION OF MANDATE

21 Art. 28.101. DEFINITION. In this subchapter, "review
22 date" means the review date assigned by the commissioner to a health
23 care benefit mandate or offer of coverage mandate under Article
24 28.103 of this code.

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

1 (1) in a statute; or

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

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

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

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

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

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

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

26 (e) The review date:

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

1 (2) may not be earlier than September 1 of the
2 even-numbered year following the fifth anniversary of the date the
3 mandate is adopted.

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

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

11 (1) review and take action necessary to verify the
12 reports relating to the mandate submitted by the department and the
13 Texas Department of Health under Article 28.151 of this code;

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

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

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

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

1 (b) The Sunset Advisory Commission may hold public hearings
2 under this article before the review date if the report required
3 under Article 28.104 is complete and available to the public.

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

10 (b) In the report the Sunset Advisory Commission shall
11 include:

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

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

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

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

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

1 subject of the mandate;

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

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

10 (4) the direct impact of the mandate on health benefit
11 plan premiums;

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

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

18 (7) the fiscal impact on the state associated with
19 continuing the mandate and with repealing the mandate;

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

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

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

27 (11) the extent to which the mandate being assessed is

1 required by federal law and the consequences of repealing the
2 mandate or continuing the mandate in a form that does not include
3 the minimum requirements of the federal law.

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

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

11 (2) individual health benefit plans; and

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

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

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

22 Art. 28.109. CONTINUATION OF MANDATE; SUBSEQUENT
23 REVIEW. (a) A health care benefit mandate or offer of coverage
24 mandate shall continue in effect until such time as the legislature
25 acts on the recommendation of the commission according to Article
26 28.106 of this code.

27 (b) After a health benefit mandate or offer of coverage

1 mandate is reviewed under this subchapter, the commissioner shall
2 set a subsequent review date for the mandate that is not later than
3 the 12th anniversary of the previous review date.

4 (c) 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. DATA REPORTING

11 Art. 28.151. DATA REPORTING. (a) Before July 1 of the
12 calendar year in which the review date assigned to a health care
13 benefit mandate or an offer of coverage mandate under Article
14 28.103 of this code occurs:

15 (1) the department shall report to the Sunset Advisory
16 Commission:

17 (A) information regarding the costs associated
18 with the mandate, including the claims paid under health benefit
19 plans that are related to the mandate and the premiums charged for
20 coverage required by the mandate, including appropriate
21 information collected by the department under Subchapter F, Chapter
22 38, of this code, as added by Chapter 852, Acts of the 77th
23 Legislature, Regular Session, 2001; and

24 (B) any other information that the commissioner
25 considers appropriate or that is requested by the Sunset Advisory
26 Commission to the extent that the information is available; and

27 (2) the Texas Department of Health shall report to the

1 Sunset Advisory Commission:

2 (A) information regarding the epidemiological
3 impact and the medical efficacy of the coverage required by the
4 mandate, if applicable; and

5 (B) any other information that the commissioner
6 of public health considers appropriate or that is requested by the
7 Sunset Advisory Commission.

8 (b) The department and the Texas Department of Health shall
9 provide, to the extent the information is available to the agency,
10 any information requested by the Legislative Budget Board for the
11 purpose of preparing an impact assessment under Subchapter B of
12 this chapter.

13 SECTION 2. (a) This Act takes effect September 1, 2003.

14 (b) Not later than June 1, 2004, the commissioner of
15 insurance shall adopt rules as necessary to implement Subchapter C,
16 Chapter 28, Insurance Code, as added by this Act.