

By: Averitt

S.B. No. 467

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Health Insurance Risk Pool.

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

SECTION 1. Subdivisions (7) and (10), Section 2, Article 3.77, Insurance Code, are amended to read as follows:

(7) "Health insurance" means individual or group health insurance. The term [and] includes a [any] hospital and medical expense incurred policy, coverage provided by a fraternal benefit society, a stipulated premium company, or an approved nonprofit health corporation, a health maintenance organization subscriber contract, coverage by a group hospital service plan, a multiple employer welfare arrangement subject to Chapter 846 of this code [Subchapter I of this chapter], or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise, including stop-loss insurance or excess loss insurance or reinsurance for individual or group health insurance or for any other health care plan or arrangement. The term does not include:

(A) [~~short-term, accident,~~] dental-only coverage;

(B) [~~7~~] vision-only coverage;

(C) [~~7 fixed indemnity, including hospital indemnity insurance,~~] credit insurance;

(D) [~~7~~] long-term care insurance;

(E) [~~7~~] disability income insurance;

1 (F) [~~or other limited benefit insurance,~~
2 ~~including specified disease insurance,~~] coverage issued as a
3 supplement to liability insurance;

4 (G) [~~]~~ insurance arising out of a workers'
5 compensation law or similar law;

6 (H) [~~]~~ automobile medical-payment insurance; [~~]~~
7 or

8 (I) insurance under which benefits are payable
9 with or without regard to fault and which is statutorily required to
10 be contained in any liability insurance policy or equivalent
11 self-insurance.

12 (10) "Insured" means a person who is a legal resident
13 of this state [~~and a citizen of the United States and~~] who is
14 eligible to receive benefits from the pool. The term "insured" may
15 include dependents and family members.

16 SECTION 2. Subsection (c), Section 4, Article 3.77,
17 Insurance Code, is amended to read as follows:

18 (c) The board shall be composed of:

19 (1) at least two persons affiliated with an insurer
20 admitted and authorized to write health insurance in this state,
21 but no more than four such persons;

22 (2) at least two persons who are insureds or parents of
23 insureds or who are reasonably expected to qualify for coverage by
24 the pool; and

25 (3) the remaining members of the board may be selected
26 from individuals such as a physician licensed to practice in this
27 state by the Texas State Board of Medical Examiners, a hospital

1 administrator, an advanced nurse practitioner, or representatives
2 of the general public who are not employed by or affiliated with an
3 insurance company or plan, group hospital service corporation, or
4 health maintenance organization [~~or licensed as or employed by or~~
5 ~~affiliated with a physician, hospital, or other health care~~
6 ~~provider~~]. A representative of the general public does include a
7 person whose only affiliation with an insurance company or plan,
8 group hospital service corporation, or health maintenance
9 organization is as an insured or person who has coverage through a
10 plan provided by the corporation or organization.

11 SECTION 3. Subsection (b), Section 6, Article 3.77,
12 Insurance Code, is amended to read as follows:

13 (b) As part of its authority, the pool may:

14 (1) provide health benefits coverage to persons who
15 are eligible for that coverage under this article;

16 (2) enter into contracts that are necessary to carry
17 out this article including, with the approval of the commissioner,
18 entering into contracts with similar pools in other states for the
19 joint performance of common administrative functions or with other
20 organizations for the performance of administrative functions;

21 (3) sue or be sued, including taking any legal actions
22 necessary or proper to recover or collect assessments due the pool;

23 (4) institute any legal action necessary to avoid
24 payment of improper claims against the pool or the coverage
25 provided by or through the pool, to recover any amounts erroneously
26 or improperly paid by the pool, to recover any amounts paid by the
27 pool as a mistake of fact or law, and to recover other amounts due

1 the pool;

2 (5) establish appropriate rates, rate schedules, rate
3 adjustments, expense allowances, agents' referral fees, and claim
4 reserve formulas and perform any actuarial functions appropriate to
5 the operation of the pool;

6 (6) adopt policy forms, endorsements, and riders and
7 applications for coverage;

8 (7) issue insurance policies subject to this article
9 and the plan of operation;

10 (8) appoint appropriate legal, actuarial, and other
11 committees that are necessary to provide technical assistance in
12 operating the pool and performing any of the functions of the pool;

13 (9) employ and set the compensation of any persons
14 necessary to assist the pool in carrying out its responsibilities
15 and functions;

16 (10) contract for stop-loss insurance for risks
17 incurred by the pool;

18 (11) recover or collect assessments imposed under
19 Section 13 of this article;

20 (12) borrow money as necessary to implement the
21 purposes of the pool;

22 (13) issue additional types of health insurance
23 policies to provide optional coverages which comply with applicable
24 provisions of state and federal law, including Medicare
25 supplemental health insurance for persons age 65 and older who are
26 eligible for Medicare;

27 (14) provide for and employ cost containment measures

1 and requirements including, but not limited to, preadmission
2 screening, second surgical opinion, concurrent utilization review
3 subject to Article 21.58A of this code, and individual case
4 management for the purpose of making the benefit plans more cost
5 effective;

6 (15) design, utilize, contract, or otherwise arrange
7 for the delivery of cost-effective health care services, including
8 establishing or contracting with preferred provider organizations
9 and health maintenance organizations; and

10 (16) provide for reinsurance on either a facultative
11 or treaty basis or both.

12 SECTION 4. Subsection (g), Section 7, Article 3.77,
13 Insurance Code, is amended to read as follows:

14 (g) The board shall determine the form and content of the
15 reports [~~report~~] required by Subsection (e)(4) of this section and
16 the time at which reports must be made.

17 SECTION 5. Subsection (d), Section 9, Article 3.77,
18 Insurance Code, is amended to read as follows:

19 (d) The pool shall determine the standard risk rate by
20 considering the premium rates charged by other insurers offering
21 health insurance coverage to individuals. The standard risk rate
22 shall be established using reasonable actuarial techniques, and
23 shall reflect anticipated experience and expenses for such
24 coverage. The premium [~~Initial pool rates may not be less than 125~~
25 ~~percent and may not exceed 150 percent of rates established as~~
26 ~~applicable for individual standard rates. Subsequent~~] rates shall
27 be established to provide fully for the expected costs of claims

1 including recovery of prior losses, expenses of operation,
2 investment income of claim reserves, and any other cost factors
3 subject to the limitations described in this subsection. In no
4 event shall pool rates exceed 200 percent of rates applicable to
5 individual standard risks.

6 SECTION 6. Subsection (a), Section 10, Article 3.77,
7 Insurance Code, is amended to read as follows:

8 (a) An individual who is a resident, as defined by Section
9 2(17)(B) of this article, and who continues to be a resident, is
10 eligible for coverage from the pool if the individual[+]

11 [~~(1)~~] provides to the pool evidence that:

12 (1) the individual has maintained health insurance
13 coverage for the previous 18 months, with no gap in coverage greater
14 than 63 days, of which the most recent coverage was through an
15 employer-sponsored plan, church plan, or government plan; [~~or~~]

16 (2) [~~provides to the pool evidence that~~] the
17 individual had health insurance coverage under another state's
18 qualified Health Insurance Portability and Accountability Act
19 health program that was terminated because the individual did not
20 reside in that state and submits an application for pool coverage
21 not later than the 63rd day after the date that coverage was
22 terminated; or

23 (3) on the date of application to the pool, the
24 individual is certified as eligible for trade adjustment assistance
25 or for pension benefit guaranty corporation assistance, as provided
26 by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No.
27 107-210).

1 SECTION 7. Subsections (e) and (f), Section 10, Article
2 3.77, Insurance Code, as amended by Chapters 1027 and 1084, Acts of
3 the 77th Legislature, Regular Session, 2001, are reenacted and
4 amended to read as follows:

5 (e) A person is not eligible for coverage from the pool if
6 the person:

7 (1) has in effect on the date pool coverage takes
8 effect health insurance coverage from an insurer or insurance
9 arrangement;

10 (2) is eligible for other health care benefits at the
11 time application is made to the pool, including COBRA continuation,
12 except:

13 (A) coverage, including COBRA continuation,
14 other continuation or conversion coverage, maintained for the
15 period of time the person is satisfying any pre-existing condition
16 waiting period under a pool policy; or

17 (B) employer group coverage conditioned by the
18 type of limitations described by Subsections (b)(1) or (3) of this
19 section; or

20 (C) individual coverage conditioned by the
21 limitations described by Subsections (b)(3) or (4) of this section;

22 (3) has terminated coverage in the pool within 12
23 months of the date that application is made to the pool, unless the
24 person demonstrates a good faith reason for the termination;

25 (4) is confined in a county jail or imprisoned in a
26 state or federal prison;

27 (5) has premiums that are paid for or reimbursed under

1 any government sponsored program or by any government agency or
2 health care provider, except as an otherwise qualifying full-time
3 employee, or dependent thereof, of a government agency or health
4 care provider;

5 (6) has had prior coverage with the pool terminated
6 during the 12 months immediately preceding the date of application
7 for nonpayment of premiums; or

8 (7) has had prior coverage with the pool terminated
9 for fraud.

10 (f) Pool coverage shall cease:

11 (1) on the date a person is no longer a legally
12 domiciled resident of this state, unless the person is:

13 (A) [~~except for a child who is~~] a student under 25
14 [~~the age of 23~~] years of age [~~and~~] who is financially dependent upon
15 an individual who is:

16 (i) the student's parent; and

17 (ii) covered by the pool;

18 (B) [~~7~~] a child for whom an individual covered by
19 the pool [~~a person~~] may be obligated to pay child support; [~~7~~] or

20 (C) a child of any age who is disabled and
21 dependent upon a [~~the~~] parent covered by the pool;

22 (2) on the first day of the month following the date a
23 person requests coverage to end;

24 (3) upon the death of the covered person;

25 (4) on the date state law requires cancellation of the
26 policy;

27 (5) at the option of the pool, 30 days after the pool

1 sends to the person any inquiry concerning the person's
2 eligibility, including an inquiry concerning the person's
3 residence, to which the person does not reply;

4 (6) on the 31st day after the day on which a premium
5 payment for pool coverage becomes due if the payment is not made
6 before that date; [~~or~~]

7 (7) on the date that the person is 65 years of age and
8 eligible for coverage under Medicare, unless the coverage received
9 from the pool is Medicare supplement coverage issued by the pool; or

10 (8) at such time as the person ceases to meet the
11 eligibility requirements of this section.

12 SECTION 8. Section 10, Article 3.77, Insurance Code, is
13 amended by adding Subsection (i) to read as follows:

14 (i) Notwithstanding Subsection (e) of this section, an
15 individual who is certified as eligible for trade adjustment
16 assistance or for pension benefit guaranty corporation assistance,
17 as provided by the Trade Adjustment Assistance Reform Act of 2002
18 (Pub. L. No. 107-210), and who has at least three months of prior
19 health insurance coverage, as described by Section 12(d) of this
20 article, is not required to exhaust any available COBRA or state
21 continuation benefits to be eligible for coverage from the pool.

22 SECTION 9. Subsection (a), Section 11, Article 3.77,
23 Insurance Code, is amended to read as follows:

24 (a) The pool shall offer pool coverage consistent with major
25 medical expense coverage to each eligible person who is under the
26 age of 65 [~~not eligible for Medicare~~]. The board, with the approval
27 of the commissioner, shall establish:

- 1 (1) the coverages to be provided by the pool;
- 2 (2) the applicable schedules of benefits; and
- 3 (3) any exclusions to coverage and other limitations.

4 SECTION 10. Section 12, Article 3.77, Insurance Code, is
5 amended by adding Subsection (d) to read as follows:

6 (d) A preexisting condition provision may not be applied to
7 an individual who has been certified as eligible for trade
8 adjustment assistance or for pension benefit guaranty corporation
9 assistance, as provided by the Trade Adjustment Assistance Reform
10 Act of 2002 (Pub. L. No. 107-210), and who was continuously covered
11 by health insurance for a period of three months before the
12 individual's separation from employment, if the individual applies
13 for coverage from the pool not later than the 63rd day after the
14 date on which the prior coverage was terminated.

15 SECTION 11. Section 13, Article 3.77, Insurance Code, is
16 amended by amending Subsections (c) and (d) and adding Subsections
17 (d-1) and (d-2) to read as follows:

18 (c) After the end of each fiscal year, the board shall
19 determine and report to the commissioner the net loss, if any, of
20 the pool for the previous calendar year, including administrative
21 expenses and incurred losses for the year, taking into account
22 investment income and other appropriate gains and losses. Any net
23 loss for the year shall be recouped by assessments on insurers.
24 Each insurer [~~insurer's assessment~~] shall report to [~~be determined~~
25 ~~annually by~~] the board the information requested by the board, as of
26 December 31 of the previous year. Each insurer's assessment shall
27 be determined annually by the board based on annual statements, the

1 insurer's annual report to the board, and any other reports
2 required by [~~the board~~] and filed with the board.

3 (d) The assessment imposed against each insurer shall be in
4 an amount that is equal to the ratio of the gross premiums collected
5 by the insurer for health insurance in this state during the
6 preceding calendar year[~~, except for Medicare supplement premiums~~
7 ~~subject to Article 3.74 and small group health insurance premiums~~
8 ~~subject to Articles 26.01 through 26.76,~~] to the gross premiums
9 collected by all insurers for health insurance[~~, except for~~
10 ~~Medicare supplement premiums subject to Article 3.74 and small~~
11 ~~group health insurance premiums subject to Articles 26.01 through~~
12 ~~26.76,~~] in this state during the preceding calendar year.

13 (d-1) An assessment is due on a date specified by the board
14 that may not be earlier than the 30th day after the date on which
15 prior written notice of the assessment due is transmitted to the
16 insurer. Interest accrues on the unpaid amount at a rate equal to
17 the prime lending rate, as stated in the most recent issue of the
18 Wall Street Journal, plus three percent, determined as of the date
19 such assessment is delinquent.

20 (d-2) For purposes of the assessment under this section, a
21 health benefit plan does not include:

22 (1) coverage under a Medicare supplement policy
23 subject to Article 3.74 of this code;

24 (2) coverage under a small employer health benefit
25 plan subject to Articles 26.01 through 26.76 of this code;

26 (3) dental-only coverage;

27 (4) vision-only coverage;

1 (5) credit insurance;

2 (6) long-term care insurance;

3 (7) disability income insurance;

4 (8) coverage issued as a supplement to liability
5 insurance;

6 (9) insurance arising out of a workers' compensation
7 law or similar law;

8 (10) automobile medical-payment insurance; or

9 (11) insurance under which benefits are payable with
10 or without regard to fault and that is statutorily required to be
11 contained in any liability insurance policy, or equivalent
12 self-insurance.

13 SECTION 12. Subsection (a), Section 15, Article 3.77,
14 Insurance Code, is amended to read as follows:

15 (a) The state auditor may [~~shall~~] conduct annually a special
16 audit of the pool under Chapter 321, Government Code. An audit
17 conducted by the [~~The~~] state auditor under this subsection may
18 [~~auditor's report shall~~] include a financial audit and an economy
19 and efficiency audit.

20 SECTION 13. (a) This Act applies only to a premium rate
21 charged by the Texas Health Insurance Risk Pool on or after the
22 effective date of this Act.

23 (b) Section 13, Article 3.77, Insurance Code, as amended by
24 this Act, applies only to an assessment for a net loss for a fiscal
25 year beginning on or after January 1, 2004.

26 SECTION 14. This Act applies only to an application for
27 initial or renewal coverage through the Texas Health Insurance Risk

1 Pool under Article 3.77, Insurance Code, as amended by this Act,
2 that is filed with that pool on or after the effective date of this
3 Act. An application filed before the effective date of this Act is
4 governed by the law in effect on the date on which the application
5 was filed, and the former law is continued in effect for that
6 purpose.

7 SECTION 15. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2003.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 467 as follows:

(1) Insert a new SECTION 13 in the bill (page 12, between lines 19 and 20, senate engrossment printing) to read as follows:

SECTION 13. Article 3.77, Insurance Code, is amended by adding Section 17 to read as follows:

Sec. 17. STUDY ON EXPANSION OF POOL COVERAGE. (a) The department shall study how to expand eligibility in the pool to include a person who:

(1) does not receive health insurance coverage through the person's employer; and

(2) is unable to obtain health insurance coverage on the open market.

(b) The study must consider ways to accomplish the expansion of eligibility while minimizing cost shifting from employers to the pool.

(c) The department shall report the results of the study to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the 79th Legislature not later than January 15, 2005.

(d) This section expires July 1, 2005.

(2) Renumber the subsequent SECTIONS of the bill appropriately.

Seaman