

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. Section 2, Article 3.77, Insurance Code, is amended by amending Subsections (7) and (10) and by adding Subsection (6-a) to read as follows:

(6-a) "Health benefit plan" means:

(A) health insurance; and

(B) a self-insured or self-funded health plan

covered by:

(i) stop-loss insurance or excess loss

insurance; or

(ii) reinsurance.

(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

1 individual or group health insurance or for any other health care
2 plan or arrangement. The term does not include:

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

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

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

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

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

10 (F) [~~7 or other limited benefit insurance,~~
11 ~~including specified disease insurance,~~] coverage issued as a
12 supplement to liability insurance;

13 (G) [~~7~~] insurance arising out of a workers'
14 compensation law or similar law;

15 (H) [~~7~~] automobile medical-payment insurance;
16 [~~7~~] or

17 (I) insurance under which benefits are payable
18 with or without regard to fault and which is statutorily required to
19 be contained in any liability insurance policy or equivalent
20 self-insurance.

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

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

27 (c) The board shall be composed of:

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

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

7 (3) the remaining members of the board may be selected
8 from individuals such as a physician licensed to practice in this
9 state by the Texas State Board of Medical Examiners, a hospital
10 administrator, an advanced nurse practitioner, or representatives
11 of the general public who are not employed by or affiliated with an
12 insurance company or plan, group hospital service corporation, or
13 health maintenance organization [~~or licensed as or employed by or~~
14 ~~affiliated with a physician, hospital, or other health care~~
15 ~~provider~~]. A representative of the general public does include a
16 person whose only affiliation with an insurance company or plan,
17 group hospital service corporation, or health maintenance
18 organization is as an insured or person who has coverage through a
19 plan provided by the corporation or organization.

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

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

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

25 (2) enter into contracts that are necessary to carry
26 out this article including, with the approval of the commissioner,
27 entering into contracts with similar pools in other states for the

1 joint performance of common administrative functions or with other
2 organizations for the performance of administrative functions;

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

5 (4) institute any legal action necessary to avoid
6 payment of improper claims against the pool or the coverage
7 provided by or through the pool, to recover any amounts erroneously
8 or improperly paid by the pool, to recover any amounts paid by the
9 pool as a mistake of fact or law, and to recover other amounts due
10 the pool;

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

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

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

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

22 (9) employ and set the compensation of any persons
23 necessary to assist the pool in carrying out its responsibilities
24 and functions;

25 (10) contract for stop-loss insurance for risks
26 incurred by the pool;

27 (11) recover or collect assessments imposed under

1 Section 13 of this article;

2 (12) borrow money as necessary to implement the
3 purposes of the pool;

4 (13) issue additional types of health insurance
5 policies to provide optional coverages which comply with applicable
6 provisions of state and federal law, including Medicare
7 supplemental health insurance for persons age 65 and older who are
8 eligible for Medicare;

9 (14) provide for and employ cost containment measures
10 and requirements including, but not limited to, preadmission
11 screening, second surgical opinion, concurrent utilization review
12 subject to Article 21.58A of this code, and individual case
13 management for the purpose of making the benefit plans more cost
14 effective;

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

19 (16) provide for reinsurance on either a facultative
20 or treaty basis or both.

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

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

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

1 (d) The pool shall determine the standard risk rate by
2 considering the premium rates charged by other insurers offering
3 health insurance coverage to individuals. The standard risk rate
4 shall be established using reasonable actuarial techniques, and
5 shall reflect anticipated experience and expenses for such
6 coverage. ~~The premium [Initial pool rates may not be less than 125~~
7 ~~percent and may not exceed 150 percent of rates established as~~
8 ~~applicable for individual standard rates. Subsequent]~~ rates shall
9 be established to provide fully for the expected costs of claims
10 including recovery of prior losses, expenses of operation,
11 investment income of claim reserves, and any other cost factors
12 subject to the limitations described in this subsection. In no
13 event shall pool rates exceed 150 ~~[200]~~ percent of rates applicable
14 to individual standard risks.

15 SECTION 6. Sections 10(e) and (f), Article 3.77, Insurance
16 Code, as amended by Chapters 1027 and 1084, Acts of the 77th
17 Legislature, Regular Session, 2001, are reenacted and amended to
18 read as follows:

19 (e) A person is not eligible for coverage from the pool if
20 the person:

21 (1) has in effect on the date pool coverage takes
22 effect health insurance coverage from an insurer or insurance
23 arrangement;

24 (2) is eligible for other health care benefits at the
25 time application is made to the pool, including COBRA continuation,
26 except:

27 (A) coverage, including COBRA continuation,

1 other continuation or conversion coverage, maintained for the
2 period of time the person is satisfying any pre-existing condition
3 waiting period under a pool policy; or

4 (B) employer group coverage conditioned by the
5 type of limitations described by Subsections (b)(1) or (3) of this
6 section; or

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

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

12 (4) is confined in a county jail or imprisoned in a
13 state or federal prison;

14 (5) has premiums that are paid for or reimbursed under
15 any government sponsored program or by any government agency or
16 health care provider, except as an otherwise qualifying full-time
17 employee, or dependent thereof, of a government agency or health
18 care provider;

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

22 (7) has had prior coverage with the pool terminated
23 for fraud.

24 (f) Pool coverage shall cease:

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

27 (A) [~~except for a child who is~~] a student under 25

1 ~~[the age of 23]~~ years of age ~~[and]~~ who is financially dependent upon
2 an individual who is:

3 (i) the student's parent; and

4 (ii) covered by the pool;

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

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

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

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

12 (4) on the date state law requires cancellation of the
13 policy;

14 (5) at the option of the pool, 30 days after the pool
15 sends to the person any inquiry concerning the person's
16 eligibility, including an inquiry concerning the person's
17 residence, to which the person does not reply;

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

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

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

27 SECTION 7. Section 11(a), Article 3.77, Insurance Code, is

1 amended to read as follows:

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

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

9 SECTION 8. Section 13, Article 3.77, Insurance Code, is
10 amended by amending Subsections (c) and (d) and by adding
11 Subsections (d-1) and (d-2) to read as follows:

12 (c) After the end of each fiscal year, the board shall
13 determine and report to the commissioner the net loss, if any, of
14 the pool for the previous calendar year, including administrative
15 expenses and incurred losses for the year, taking into account
16 investment income and other appropriate gains and losses. Any net
17 loss for the year shall be recouped by assessments on insurers.
18 Each insurer [~~insurer's assessment~~] shall report to [~~be determined~~
19 ~~annually by~~] the board the number of employees or retired employees
20 or individual policyholders or subscribers enrolled in the
21 insurer's health benefit plans offered in this state, including the
22 number of employees or retired employees for whom a premium is paid
23 and coverage is provided under an excess loss, stop-loss, or
24 reinsurance policy issued by the insurer to an employer or group
25 health plan in this state, as of December 31 of the previous year.
26 The insurer providing stop-loss insurance, excess loss insurance,
27 or reinsurance may exclude from its count the number of dependents

1 and, from the number of employees or retired employees or
2 individual policyholders or subscribers, those persons who have
3 been counted by the primary carrier or primary reinsurer. Each
4 insurer's assessment shall be determined annually by the board
5 based on annual statements, the insurer's annual report to the
6 board, and any other reports required by and filed with the board
7 [and filed with the board].

8 (d) The assessment imposed against each insurer shall be
9 determined by the number of employees and retired employees or
10 individual policyholders or subscribers enrolled in the insurer's
11 health benefit plans offered in this state, including the number of
12 employees or retired employees for whom a premium is paid and
13 coverage is provided under an excess loss, stop-loss, or
14 reinsurance policy issued by the insurer to an employer or group
15 health plan in this state, as of December 31 of the previous year.
16 The assessment, if any, determined by the board shall be assessed as
17 follows:

18 (1) the total amount to be assessed shall be divided by
19 the total number of employees, retired employees, and individual
20 policyholders, and subscribers reported by all insurers, to arrive
21 at a per capita amount; and

22 (2) the amount assessed to each insurer shall be equal
23 to the number of employees, retired employees, and individual
24 policyholders, and subscribers reported by that insurer, as of the
25 prior December 31, multiplied by the per capita amount ~~[in an amount~~
26 ~~that is equal to the ratio of the gross premiums collected by the~~
27 ~~insurer for health insurance in this state during the preceding~~

1 ~~calendar year, except for Medicare supplement premiums subject to~~
2 ~~Article 3.74 and small group health insurance premiums subject to~~
3 ~~Articles 26.01 through 26.76, to the gross premiums collected by~~
4 ~~all insurers for health insurance, except for Medicare supplement~~
5 ~~premiums subject to Article 3.74 and small group health insurance~~
6 ~~premiums subject to Articles 26.01 through 26.76, in this state~~
7 ~~during the preceding calendar year].~~

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

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

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

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

21 (3) dental-only coverage;

22 (4) vision-only coverage;

23 (5) credit insurance;

24 (6) long-term care insurance;

25 (7) disability income insurance;

26 (8) coverage issued as a supplement to liability
27 insurance;

1 (9) insurance arising out of a workers' compensation
2 law or similar law;

3 (10) automobile medical-payment insurance; or

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

8 SECTION 9. Section 15(a), Article 3.77, Insurance Code, is
9 amended to read as follows:

10 (a) The state auditor may [~~shall~~] conduct annually a special
11 audit of the pool under Chapter 321, Government Code. An audit
12 conducted by the [~~The~~] state auditor under this subsection may
13 [~~auditor's report shall~~] include a financial audit and an economy
14 and efficiency audit.

15 SECTION 10. This Act applies only to an application for
16 initial or renewal coverage through the Texas Health Insurance Risk
17 Pool under Article 3.77, Insurance Code, as amended by this Act,
18 that is filed with that pool on or after the effective date of this
19 Act. An application filed before the effective date of this Act is
20 governed by the law in effect on the date on which the application
21 was filed, and the former law is continued in effect for that
22 purpose.

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