

1-1 By: Averitt S.B. No. 467
1-2 (In the Senate - Filed February 12, 2003; February 17, 2003,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 29, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 29, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 467 By: Staples

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the operation of the Texas Health Insurance Risk Pool.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivisions (7) and (10), Section 2, Article
1-13 3.77, Insurance Code, are amended to read as follows:

1-14 (7) "Health insurance" means individual or group
1-15 health insurance. The term [and] includes a [any] hospital and
1-16 medical expense incurred policy, coverage provided by a fraternal
1-17 benefit society, a stipulated premium company, or an approved
1-18 nonprofit health corporation, a health maintenance organization
1-19 subscriber contract, coverage by a group hospital service plan, a
1-20 multiple employer welfare arrangement subject to Chapter 846 of
1-21 this code [Subchapter I of this chapter], or any other health care
1-22 plan or arrangement that pays for or furnishes medical or health
1-23 care services whether by insurance or otherwise, including
1-24 stop-loss insurance or excess loss insurance or reinsurance for
1-25 individual or group health insurance or for any other health care
1-26 plan or arrangement. The term does not include:

1-27 (A) ~~[short-term, accident,]~~ dental-only
1-28 coverage;

1-29 (B) vision-only coverage;

1-30 (C) ~~[fixed indemnity, including hospital~~
1-31 ~~indemnity insurance,]~~ credit insurance;

1-32 (D) long-term care insurance;

1-33 (E) disability income insurance;

1-34 (F) ~~[or other limited benefit insurance,~~
1-35 ~~including specified disease insurance,]~~ coverage issued as a
1-36 supplement to liability insurance;

1-37 (G) insurance arising out of a workers'
1-38 compensation law or similar law;

1-39 (H) automobile medical-payment insurance; ~~[~~
1-40 ~~or]~~

1-41 (I) insurance under which benefits are payable
1-42 with or without regard to fault and which is statutorily required to
1-43 be contained in any liability insurance policy or equivalent
1-44 self-insurance; and

1-45 (J) health insurance plans established under
1-46 Chapter 172, Local Government Code, as well as other
1-47 government-established health plans.

1-48 (10) "Insured" means a person who is a legal resident
1-49 of this state ~~[and a citizen of the United States and]~~ who is
1-50 eligible to receive benefits from the pool. The term "insured" may
1-51 include dependents and family members.

1-52 SECTION 2. Subsection (c), Section 4, Article 3.77,
1-53 Insurance Code, is amended to read as follows:

1-54 (c) The board shall be composed of:

1-55 (1) at least two persons affiliated with an insurer
1-56 admitted and authorized to write health insurance in this state,
1-57 but no more than four such persons;

1-58 (2) at least two persons who are insureds or parents of
1-59 insureds or who are reasonably expected to qualify for coverage by
1-60 the pool; and

1-61 (3) the remaining members of the board may be selected
1-62 from individuals such as a physician licensed to practice in this
1-63 state by the Texas State Board of Medical Examiners, a hospital

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

2-11 SECTION 3. Subsection (b), Section 6, Article 3.77,
 2-12 Insurance Code, is amended to read as follows:

2-13 (b) As part of its authority, the pool may:

2-14 (1) provide health benefits coverage to persons who
 2-15 are eligible for that coverage under this article;

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

2-21 (3) sue or be sued, including taking any legal actions
 2-22 necessary or proper to recover or collect assessments due the pool;

2-23 (4) institute any legal action necessary to avoid
 2-24 payment of improper claims against the pool or the coverage
 2-25 provided by or through the pool, to recover any amounts erroneously
 2-26 or improperly paid by the pool, to recover any amounts paid by the
 2-27 pool as a mistake of fact or law, and to recover other amounts due
 2-28 the pool;

2-29 (5) establish appropriate rates, rate schedules, rate
 2-30 adjustments, expense allowances, agents' referral fees, and claim
 2-31 reserve formulas and perform any actuarial functions appropriate to
 2-32 the operation of the pool;

2-33 (6) adopt policy forms, endorsements, and riders and
 2-34 applications for coverage;

2-35 (7) issue insurance policies subject to this article
 2-36 and the plan of operation;

2-37 (8) appoint appropriate legal, actuarial, and other
 2-38 committees that are necessary to provide technical assistance in
 2-39 operating the pool and performing any of the functions of the pool;

2-40 (9) employ and set the compensation of any persons
 2-41 necessary to assist the pool in carrying out its responsibilities
 2-42 and functions;

2-43 (10) contract for stop-loss insurance for risks
 2-44 incurred by the pool;

2-45 (11) recover or collect assessments imposed under
 2-46 Section 13 of this article;

2-47 (12) borrow money as necessary to implement the
 2-48 purposes of the pool;

2-49 (13) issue additional types of health insurance
 2-50 policies to provide optional coverages which comply with applicable
 2-51 provisions of state and federal law, including Medicare
 2-52 supplemental health insurance for persons age 65 and older who are
 2-53 eligible for Medicare;

2-54 (14) provide for and employ cost containment measures
 2-55 and requirements including, but not limited to, preadmission
 2-56 screening, second surgical opinion, concurrent utilization review
 2-57 subject to Article 21.58A of this code, and individual case
 2-58 management for the purpose of making the benefit plans more cost
 2-59 effective;

2-60 (15) design, utilize, contract, or otherwise arrange
 2-61 for the delivery of cost-effective health care services, including
 2-62 establishing or contracting with preferred provider organizations
 2-63 and health maintenance organizations; and

2-64 (16) provide for reinsurance on either a facultative
 2-65 or treaty basis or both.

2-66 SECTION 4. Subsection (g), Section 7, Article 3.77,
 2-67 Insurance Code, is amended to read as follows:

2-68 (g) The board shall determine the form and content of the
 2-69 reports [~~report~~] required by Subsection (e)(4) of this section and

3-1 the time at which reports must be made.

3-2 SECTION 5. Subsection (d), Section 9, Article 3.77,
3-3 Insurance Code, is amended to read as follows:

3-4 (d) The pool shall determine the standard risk rate by
3-5 considering the premium rates charged by other insurers offering
3-6 health insurance coverage to individuals. The standard risk rate
3-7 shall be established using reasonable actuarial techniques, and
3-8 shall reflect anticipated experience and expenses for such
3-9 coverage. ~~The premium [Initial pool rates may not be less than 125~~
3-10 ~~percent and may not exceed 150 percent of rates established as~~
3-11 ~~applicable for individual standard rates. Subsequent]~~ rates shall
3-12 be established to provide fully for the expected costs of claims
3-13 including recovery of prior losses, expenses of operation,
3-14 investment income of claim reserves, and any other cost factors
3-15 subject to the limitations described in this subsection. In no
3-16 event shall pool rates exceed 200 percent of rates applicable to
3-17 individual standard risks.

3-18 SECTION 6. Subsection (a), Section 10, Article 3.77,
3-19 Insurance Code, is amended to read as follows:

3-20 (a) An individual who is a resident, as defined by Section
3-21 2(17)(B) of this article, and who continues to be a resident, is
3-22 eligible for coverage from the pool if the individual~~+~~

3-23 ~~[(1)]~~ provides to the pool evidence that:

3-24 (1) the individual has maintained health insurance
3-25 coverage for the previous 18 months, with no gap in coverage greater
3-26 than 63 days, of which the most recent coverage was through an
3-27 employer-sponsored plan, church plan, or government plan; ~~or~~

3-28 (2) ~~[provides to the pool evidence that]~~ the
3-29 individual had health insurance coverage under another state's
3-30 qualified Health Insurance Portability and Accountability Act
3-31 health program that was terminated because the individual did not
3-32 reside in that state and submits an application for pool coverage
3-33 not later than the 63rd day after the date that coverage was
3-34 terminated; or

3-35 (3) on the date of application to the pool, the
3-36 individual is certified as eligible for trade adjustment assistance
3-37 or for pension benefit guaranty corporation assistance, as provided
3-38 by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No.
3-39 107-210).

3-40 SECTION 7. Subsections (e) and (f), Section 10, Article
3-41 3.77, Insurance Code, as amended by Chapters 1027 and 1084, Acts of
3-42 the 77th Legislature, Regular Session, 2001, are reenacted and
3-43 amended to read as follows:

3-44 (e) A person is not eligible for coverage from the pool if
3-45 the person:

3-46 (1) has in effect on the date pool coverage takes
3-47 effect health insurance coverage from an insurer or insurance
3-48 arrangement;

3-49 (2) is eligible for other health care benefits at the
3-50 time application is made to the pool, including COBRA continuation,
3-51 except:

3-52 (A) coverage, including COBRA continuation,
3-53 other continuation or conversion coverage, maintained for the
3-54 period of time the person is satisfying any pre-existing condition
3-55 waiting period under a pool policy; or

3-56 (B) employer group coverage conditioned by the
3-57 type of limitations described by Subsections (b)(1) or (3) of this
3-58 section; or

3-59 (C) individual coverage conditioned by the
3-60 limitations described by Subsections (b)(3) or (4) of this section;

3-61 (3) has terminated coverage in the pool within 12
3-62 months of the date that application is made to the pool, unless the
3-63 person demonstrates a good faith reason for the termination;

3-64 (4) is confined in a county jail or imprisoned in a
3-65 state or federal prison;

3-66 (5) has premiums that are paid for or reimbursed under
3-67 any government sponsored program or by any government agency or
3-68 health care provider, except as an otherwise qualifying full-time
3-69 employee, or dependent thereof, of a government agency or health

4-1 care provider;

4-2 (6) has had prior coverage with the pool terminated
4-3 during the 12 months immediately preceding the date of application
4-4 for nonpayment of premiums; or

4-5 (7) has had prior coverage with the pool terminated
4-6 for fraud.

4-7 (f) Pool coverage shall cease:

4-8 (1) on the date a person is no longer a legally
4-9 domiciled resident of this state, unless the person is:

4-10 (A) [except for a child who is] a student under 25
4-11 [the age of 23] years of age [and] who is financially dependent upon
4-12 an individual who is:

4-13 (i) the student's parent; and

4-14 (ii) covered by the pool;

4-15 (B) [r] a child for whom an individual covered by
4-16 the pool [a person] may be obligated to pay child support; [r] or

4-17 (C) a child of any age who is disabled and
4-18 dependent upon a [the] parent covered by the pool;

4-19 (2) on the first day of the month following the date a
4-20 person requests coverage to end;

4-21 (3) upon the death of the covered person;

4-22 (4) on the date state law requires cancellation of the
4-23 policy;

4-24 (5) at the option of the pool, 30 days after the pool
4-25 sends to the person any inquiry concerning the person's
4-26 eligibility, including an inquiry concerning the person's
4-27 residence, to which the person does not reply;

4-28 (6) on the 31st day after the day on which a premium
4-29 payment for pool coverage becomes due if the payment is not made
4-30 before that date; [or]

4-31 (7) on the date that the person is 65 years of age and
4-32 eligible for coverage under Medicare, unless the coverage received
4-33 from the pool is Medicare supplement coverage issued by the pool; or
4-34 (8) at such time as the person ceases to meet the

4-35 eligibility requirements of this section.

4-36 SECTION 8. Section 10, Article 3.77, Insurance Code, is
4-37 amended by adding Subsection (i) to read as follows:

4-38 (i) Notwithstanding Subsection (e) of this section, an
4-39 individual who is certified as eligible for trade adjustment
4-40 assistance or for pension benefit guaranty corporation assistance,
4-41 as provided by the Trade Adjustment Assistance Reform Act of 2002
4-42 (Pub. L. No. 107-210), and who has at least three months of prior
4-43 health insurance coverage, as described by Section 12(d) of this
4-44 article, is not required to exhaust any available COBRA or state
4-45 continuation benefits to be eligible for coverage from the pool.

4-46 SECTION 9. Subsection (a), Section 11, Article 3.77,
4-47 Insurance Code, is amended to read as follows:

4-48 (a) The pool shall offer pool coverage consistent with major
4-49 medical expense coverage to each eligible person who is under the
4-50 age of 65 [not eligible for Medicare]. The board, with the approval
4-51 of the commissioner, shall establish:

4-52 (1) the coverages to be provided by the pool;

4-53 (2) the applicable schedules of benefits; and

4-54 (3) any exclusions to coverage and other limitations.

4-55 SECTION 10. Section 12, Article 3.77, Insurance Code, is
4-56 amended by adding Subsection (d) to read as follows:

4-57 (d) A preexisting condition provision may not be applied to
4-58 an individual who has been certified as eligible for trade
4-59 adjustment assistance or for pension benefit guaranty corporation
4-60 assistance, as provided by the Trade Adjustment Assistance Reform
4-61 Act of 2002 (Pub. L. No. 107-210), and who was continuously covered
4-62 by health insurance for a period of three months before the
4-63 individual's separation from employment, if the individual applies
4-64 for coverage from the pool not later than the 63rd day after the
4-65 date on which the prior coverage was terminated.

4-66 SECTION 11. Section 13, Article 3.77, Insurance Code, is
4-67 amended by amending Subsections (c) and (d) and adding Subsections
4-68 (d-1) and (d-2) to read as follows:

4-69 (c) After the end of each fiscal year, the board shall

determine and report to the commissioner the net loss, if any, of the pool for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses. Any net loss for the year shall be recouped by assessments on insurers. Each insurer ~~[insurer's assessment]~~ shall report to ~~[be determined annually by]~~ the board the information requested by the board, as of December 31 of the previous year. Each insurer's assessment shall be determined annually by the board based on annual statements, the insurer's annual report to the board, and any other reports required by [the board] and filed with the board.

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

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

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

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

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

(3) dental-only coverage;

(4) vision-only coverage;

(5) credit insurance;

(6) long-term care insurance;

(7) disability income insurance;

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

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

(10) automobile medical-payment insurance; or

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

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

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

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

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

SECTION 14. This Act applies only to an application for initial or renewal coverage through the Texas Health Insurance Risk Pool under Article 3.77, Insurance Code, as amended by this Act, that is filed with that pool on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date on which the application was filed, and the former law is continued in effect for that purpose.

6-1 SECTION 15. This Act takes effect immediately if it
6-2 receives a vote of two-thirds of all the members elected to each
6-3 house, as provided by Section 39, Article III, Texas Constitution.
6-4 If this Act does not receive the vote necessary for immediate
6-5 effect, this Act takes effect September 1, 2003.

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