

AN ACT

relating to certain coverage and compensation requirements regarding insurers and health maintenance organizations, including authorizing insurers and health maintenance organizations to issue plans that do not include state-mandated health benefits.

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

SECTION 1. Subchapter G, Chapter 3, Insurance Code, is amended by adding Article 3.80 to read as follows:

Art. 3.80. TEXAS CONSUMER CHOICE OF BENEFITS HEALTH INSURANCE PLAN ACT

Sec. 1. PURPOSE. The legislature recognizes the need for individuals, employers, and other purchasers of coverage in this state to have the opportunity to choose health insurance plans that are more affordable and flexible than existing market policies offering accident and sickness insurance coverage. The legislature, therefore, seeks to increase the availability of health insurance coverage by allowing insurers authorized to engage in the business of insurance in this state to issue accident and sickness policies that, in whole or in part, do not offer or provide state-mandated health benefits.

Sec. 2. DEFINITIONS. In this article:

(1) "Health carrier" means any entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state, including an

1 insurance company, a group hospital service corporation under
2 Chapter 842 of this code, and a stipulated premium company under
3 Chapter 884 of this code.

4 (2) "Standard health benefit plan" means an accident
5 or sickness insurance policy that, in whole or in part, does not
6 offer or provide state-mandated health benefits, but that provides
7 creditable coverage as defined by Article 26.035(a) of this code or
8 Section 1(H)(4)(b), Chapter 397, Acts of the 54th Legislature,
9 Regular Session, 1955 (Article 3.70-1, Vernon's Texas Insurance
10 Code).

11 Sec. 3. STATE-MANDATED HEALTH BENEFITS. (a) For purposes
12 of this article, "state-mandated health benefits" means coverage
13 required under this code or other laws of this state to be provided
14 in an individual, blanket, or group policy for accident and health
15 insurance or a contract for a health-related condition that:

16 (1) includes coverage for specific health care
17 services or benefits;

18 (2) places limitations or restrictions on
19 deductibles, coinsurance, copayments, or any annual or lifetime
20 maximum benefit amounts; or

21 (3) includes a specific category of licensed health
22 care practitioner from whom an insured is entitled to receive care.

23 (b) For purposes of this article, "state-mandated health
24 benefits" does not include benefits that are mandated by federal
25 law or standard provisions or rights required under this code or
26 other laws of this state to be provided in an individual, blanket,
27 or group policy for accident and health insurance that are

1 unrelated to specific health illnesses, injuries, or conditions of
2 an insured, including provisions related to:

3 (1) continuation of coverage under:

4 (A) Section 1(d)(3) and Section 3B, Article
5 3.51-6 of this code;

6 (B) Section 2(C), Chapter 397, Acts of the 54th
7 Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas
8 Insurance Code);

9 (C) Article 3.51-8 of this code; and

10 (D) Section 3C, Article 3.51-6 of this code, as
11 added by Section 10, Chapter 1041, Acts of the 71st Legislature,
12 Regular Session, 1989;

13 (2) termination of coverage under Articles 3.70-1A,
14 26.23, and 26.86 of this code;

15 (3) preexisting conditions under Section 1(H),
16 Chapter 397, Acts of the 54th Legislature, Regular Session, 1955
17 (Article 3.70-1, Vernon's Texas Insurance Code), and Articles 26.49
18 and 26.90 of this code;

19 (4) coverage of children, including newborn or adopted
20 children, under:

21 (A) Sections 1, 3D, and 3E, Article 3.51-6 of
22 this code;

23 (B) Sections 2(A), (E), (K), and (M), Chapter
24 397, Acts of the 54th Legislature, Regular Session, 1955 (Article
25 3.70-2, Vernon's Texas Insurance Code);

26 (C) Subchapter J, Chapter 3 of this code;

27 (D) Article 21.24-2 of this code;

- 1 (E) Article 26.21(n) of this code;
2 (F) Article 26.21A of this code; and
3 (G) Article 26.84 of this code;
4 (5) services of practitioners under:
5 (A) Article 21.52 of this code;
6 (B) Article 3.70-3C of this code, as added by
7 Chapter 1260, Acts of the 75th Legislature, Regular Session, 1997;
8 or
9 (C) Section 2(B), Chapter 397, Acts of the 54th
10 Legislature, Regular Session, 1955 (Article 3.70-2, Vernon's Texas
11 Insurance Code);
12 (6) supplies and services associated with the
13 treatment of diabetes under Article 21.53G of this code;
14 (7) coverage for serious mental illness under Article
15 3.51-14 of this code if the standard health benefit plan is issued
16 to a large employer as defined by Article 26.02 of this code;
17 (8) coverage for childhood immunizations and hearing
18 screening as required by Article 21.53F of this code, as added by
19 Chapter 683, Acts of the 75th Legislature, Regular Session, 1997,
20 and Article 21.53K of this code;
21 (9) coverage for reconstructive surgery for certain
22 craniofacial abnormalities of children as required by Article
23 21.53W of this code;
24 (10) coverage for the dietary treatment of
25 phenylketonuria as required by Article 3.79 of this code;
26 (11) coverage for referral to a non-network physician
27 or provider when medically necessary covered services are not

1 available through network physicians or providers, as required by
2 Article 20A.09(a)(3)(C) of this code; and

3 (12) coverage for cancer screenings under the
4 following articles of this code:

5 (A) Article 3.70-2(H), as added by Chapter 1091,
6 Acts of the 70th Legislature, Regular Session, 1987;

7 (B) Article 21.53F, as added by Chapter 1287,
8 Acts of the 75th Legislature, Regular Session, 1997; and

9 (C) Article 21.53S.

10 Sec. 4. STANDARD HEALTH BENEFIT PLANS AUTHORIZED; MINIMUM
11 REQUIREMENT. (a) A health carrier may offer one or more standard
12 health benefit plans.

13 (b) Any standard health benefit plan must include coverage
14 for direct services to an obstetrical or gynecological care
15 provider as required by Article 21.53D of this code as added by
16 Chapter 912, Acts of the 75th Legislature, Regular Session, 1997.

17 Sec. 5. NOTICE TO POLICYHOLDER. (a) Each written
18 application for participation in a standard health benefit plan
19 must contain the following language at the beginning of the
20 document in bold type:

21 "You have the option to choose this Consumer
22 Choice of Benefits Health Insurance Plan that, either
23 in whole or in part, does not provide state-mandated
24 health benefits normally required in accident and
25 sickness insurance policies in Texas. This standard
26 health benefit plan may provide a more affordable
27 health insurance policy for you although, at the same

1 time, it may provide you with fewer health benefits
2 than those normally included as state-mandated health
3 benefits in policies in Texas. If you choose this
4 standard health benefit plan, please consult with your
5 insurance agent to discover which state-mandated
6 health benefits are excluded in this policy."

7 (b) Each standard health benefit plan must contain the
8 following language at the beginning of the document in bold type:

9 "This Consumer Choice of Benefits Health
10 Insurance Plan, either in whole or in part, does not
11 provide state-mandated health benefits normally
12 required in accident and sickness insurance policies
13 in Texas. This standard health benefit plan may
14 provide a more affordable health insurance policy for
15 you although, at the same time, it may provide you with
16 fewer health benefits than those normally included as
17 state-mandated health benefits in policies in Texas.
18 Please consult with your insurance agent to discover
19 which state-mandated health benefits are excluded in
20 this policy."

21 Sec. 6. DISCLOSURE STATEMENT. (a) An insurer providing a
22 standard health benefit plan must provide a proposed policyholder
23 or policyholder with a written disclosure statement that:

24 (1) acknowledges that the standard health benefit plan
25 being purchased does not provide some or all state-mandated health
26 benefits;

27 (2) lists those state-mandated health benefits not

1 included under the standard health benefit plan; and

2 (3) if the standard health benefit plan is issued to an
3 individual policyholder, provides a notice that purchase of the
4 plan may limit the policyholder's future coverage options in the
5 event the policyholder's health changes and needed benefits are not
6 available under the standard health benefit plan.

7 (b) Each applicant for initial coverage and each
8 policyholder on renewal of coverage must sign the disclosure
9 statement provided by the insurer under Subsection (a) of this
10 section and return the statement to the insurer. Under a group
11 policy or contract, the term "applicant" means the employer.

12 (c) An insurer must:

13 (1) retain the signed disclosure statement in the
14 insurer's records; and

15 (2) on request from the commissioner, provide the
16 signed disclosure statement to the department.

17 Sec. 7. RULES. The commissioner shall adopt rules as
18 necessary to implement this article.

19 Sec. 8. ADDITIONAL POLICIES. An insurer that offers one or
20 more standard health benefit plans under this article must also
21 offer at least one accident or sickness insurance policy with
22 state-mandated health benefits that is otherwise authorized by this
23 code.

24 Sec. 9. RATES. A health carrier shall file for
25 informational purposes the rates to be used with a standard health
26 benefit plan. Nothing in this section shall be construed as
27 granting the commissioner any power or authority to determine, fix,

1 prescribe, or promulgate the rates to be charged for any individual
2 accident and sickness insurance policy or policies.

3 SECTION 2. The Texas Health Maintenance Organization Act
4 (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding
5 Section 9N to read as follows:

6 Sec. 9N. CHOICE OF BENEFITS PLAN. (a) The legislature
7 recognizes the need for individuals and employers in this state to
8 have the opportunity to choose health maintenance organization
9 plans that are more affordable and flexible than existing market
10 health care plans offered by health maintenance organizations. The
11 legislature, therefore, seeks to increase the availability of
12 health care plans by allowing health maintenance organizations
13 authorized to operate health maintenance organizations in this
14 state to issue group or individual evidences of coverage that, in
15 whole or in part, do not offer or provide mandated health benefits.

16 (b) In this section, "standard health benefit plan" means a
17 group or individual evidence of coverage that, in whole or in part,
18 does not offer or provide state-mandated health benefits, but that
19 provides creditable coverage as defined by Article 26.035(a) of
20 this code or Section 1(H)(4)(b), Chapter 397, Acts of the 54th
21 Legislature, Regular Session, 1955 (Article 3.70-1, Vernon's Texas
22 Insurance Code).

23 (c) For purposes of this section, "state-mandated health
24 benefits" means coverage required under the Insurance Code or other
25 laws of this state to be provided in an evidence of coverage that:

26 (1) includes coverage for specific health care
27 services or benefits;

1 (2) places limitations or restrictions on
2 deductibles, coinsurance, copayments, or any annual or lifetime
3 maximum benefit amounts, including limitations provided in Section
4 9(1) of this Act, as added by Chapter 1026, Acts of the 75th
5 Legislature, Regular Session, 1997; or

6 (3) includes a specific category of licensed health
7 care practitioner from whom an enrollee is entitled to receive
8 care.

9 (d) For purposes of this section, "state-mandated health
10 benefits" does not include coverage that is mandated by federal law
11 or standard provisions or rights required under the Insurance Code
12 or other law of this state to be provided in an evidence of coverage
13 that are unrelated to specific health illnesses, injuries, or
14 conditions of an insured, including provisions related to:

15 (1) continuation of coverage under Section 3B, Article
16 3.51-6, Insurance Code;

17 (2) termination of coverage under Articles 3.70-1A,
18 26.23, and 26.86, Insurance Code;

19 (3) preexisting conditions under Section 1(H),
20 Chapter 397, Acts of the 54th Legislature, Regular Session, 1955
21 (Article 3.70-1, Vernon's Texas Insurance Code), and Articles 26.49
22 and 26.90, Insurance Code;

23 (4) coverage of children, including newborn or adopted
24 children, under:

25 (A) Subchapter J, Chapter 3, Insurance Code;

26 (B) Article 21.24-2, Insurance Code;

27 (C) Article 26.21(n), Insurance Code;

1 (D) Article 26.21A, Insurance Code; and

2 (E) Article 26.84, Insurance Code;

3 (5) services of providers under Section 843.304 of
4 this code;

5 (6) coverage for serious mental health illness under
6 Article 3.51-14, Insurance Code, if the standard health benefit
7 plan is issued to a large employer as defined in Article 26.02,
8 Insurance Code; and

9 (7) coverage for cancer screenings under the following
10 articles of this code:

11 (A) Article 3.70-2(H), as added by Chapter 1091,
12 Acts of the 70th Legislature, Regular Session, 1987;

13 (B) Article 21.53F, as added by Chapter 1287,
14 Acts of the 75th Legislature, Regular Session, 1997; and

15 (C) Article 21.53S.

16 (e) A health maintenance organization authorized to issue
17 an evidence of coverage in this state may offer one or more standard
18 health benefit plans.

19 (f)(1) Each written application for enrollment in a
20 standard health benefit plan must contain the following language at
21 the beginning of the document in bold type:

22 "You have the option to choose this Consumer
23 Choice of Benefits Health Maintenance Organization
24 health care plan that, either in whole or in part, does
25 not provide state-mandated health benefits normally
26 required in evidences of coverage in Texas. This
27 standard health benefit plan may provide a more

1 affordable health plan for you although, at the same
2 time, it may provide you with fewer health plan
3 benefits than those normally included as
4 state-mandated health benefits in Texas. If you
5 choose this standard health benefit plan, please
6 consult with your insurance agent to discover which
7 state-mandated health benefits are excluded in this
8 evidence of coverage."

9 (2) Each standard health benefit plan must contain the
10 following language at the beginning of the document in bold type:

11 "This Consumer Choice of Benefits Health
12 Maintenance Organization health care plan, either in
13 whole or in part, does not provide state-mandated
14 health benefits normally required in evidences of
15 coverage in Texas. This standard health benefit plan
16 may provide a more affordable health plan for you
17 although, at the same time, it may provide you with
18 fewer health plan benefits than those normally
19 included as state-mandated health benefits in Texas.
20 Please consult with your insurance agent to discover
21 which state-mandated health benefits are excluded in
22 this evidence of coverage."

23 (g) A health maintenance organization providing a standard
24 health benefit plan must provide a proposed contract holder or a
25 contract holder with a written disclosure statement that:

26 (1) acknowledges that the standard health benefit plan
27 being purchased does not provide some or all state-mandated health

1 benefits;

2 (2) lists those state-mandated health benefits not
3 included in the standard health benefit plan; and

4 (3) if the standard health benefit plan is issued to an
5 individual certificate holder, provides a notice that purchase of
6 the plan may limit the certificate holder's future coverage options
7 in the event the certificate holder's health changes and needed
8 benefits are not available under the standard health benefit plan.

9 (h) Each applicant for initial enrollment and each contract
10 holder on renewal must sign the disclosure statement provided by
11 the health maintenance organization under Subsection (g) of this
12 section and return the statement to the health maintenance
13 organization. Under a group evidence of coverage, the term
14 "applicant" means the employer.

15 (i) A health maintenance organization must:

16 (1) retain the signed disclosure statement in the
17 organization's records; and

18 (2) on request from the commissioner, provide the
19 signed disclosure statement to the department.

20 (j) The commissioner shall adopt rules as necessary to
21 implement this section.

22 (k) A health maintenance organization that offers one or
23 more standard health benefit plans under this section must also
24 offer at least one evidence of coverage that provides
25 state-mandated health benefits and that is otherwise authorized by
26 the Insurance Code.

27 (l) A health maintenance organization shall file for

1 informational purposes the rates to be used with a standard health
2 benefit plan. Nothing in this section shall be construed as
3 granting the commissioner any power or authority to determine, fix,
4 prescribe, or promulgate the rates to be charged for any evidence of
5 coverage.

6 SECTION 3. Subsection (b), Article 26.38, Insurance Code,
7 is amended to read as follows:

8 (b) A health maintenance organization that participates in
9 a purchasing cooperative that provides employees of small employers
10 a choice of benefit plans, that has established a separate class of
11 business as provided by Article 26.31 of this code, and that has
12 established a separate line of business as provided under Article
13 26.48(a) of this code [~~and Title XIII, Public Health Service Act (42~~
14 ~~U.S.C. Section 300e et seq.)~~] may use rating methods in accordance
15 with this subchapter that are used by other small employer carriers
16 participating in the same cooperative, including rating by age and
17 gender.

18 SECTION 4. Article 26.42, Insurance Code, is amended to
19 read as follows:

20 Art. 26.42. SMALL EMPLOYER HEALTH BENEFIT PLANS. (a) A
21 small employer carrier shall offer a standard health benefit plan
22 as authorized by Article 3.80 of this code and Section 9N, Texas
23 Health Maintenance Organization Act (Article 20A.09N, Vernon's
24 Texas Insurance Code) [~~the following two health benefit plans as~~
25 ~~adopted by the commissioner:~~

26 [~~(1) the catastrophic care benefit plan; and~~

27 [~~(2) the basic coverage benefit plan].~~

1 (b) A small employer carrier may offer to a small employer
2 additional benefit riders to the standard health benefit plan or
3 may design and offer standard health benefit plans with additional
4 mandatory benefits [~~either of the benefit plans~~].

5 (c) Subject to the provisions of this chapter, a small
6 employer carrier shall [~~may~~] also offer to small employers at least
7 one [~~any~~] other health benefit plan authorized under this code that
8 provides state-mandated health benefits. Article 26.06(c) does not
9 apply to a health benefit plan offered to a small employer under
10 this subsection.

11 SECTION 5. Subsection (a), Article 26.43, Insurance Code,
12 is amended to read as follows:

13 (a) A [~~The commissioner shall promulgate the benefits~~
14 ~~section of the catastrophic care benefit plan and the basic~~
15 ~~coverage benefit plan policy forms in accordance with Article~~
16 ~~26.44A of this code and shall develop prototype policies for each of~~
17 ~~the benefit plans. For all other portions of these policy forms, a~~
18 small employer carrier shall comply with Article 3.42 of this code
19 as it relates to policy form approval and with the Texas Health
20 Maintenance Organization Act (Article 20A.01 et seq., Vernon's
21 Texas Insurance Code) as it relates to approval of an evidence of
22 coverage. A small employer carrier may not offer [~~these~~] benefit
23 plans through a policy form or evidence of coverage that does not
24 comply with this chapter.

25 SECTION 6. Subsection (a), Article 26.48, Insurance Code,
26 is amended to read as follows:

27 (a) A health maintenance organization [~~may offer~~]:

1 (1) shall offer at least one ~~[a]~~ state-approved basic
2 health care ~~[benefit]~~ plan that complies with this chapter, the
3 Texas Health Maintenance Organization Act (Chapter 20A, Vernon's
4 Texas Insurance Code), Title XIII, Public Health Service Act (42
5 U.S.C. Section 300e et seq.), and its subsequent amendments, and
6 rules adopted under these laws and may offer additional such plans;

7 (2) shall offer a standard health benefit plan under
8 Section 9N, Texas Health Maintenance Organization Act (Article
9 20A.09N, Vernon's Texas Insurance Code), and may offer additional
10 benefit riders to the standard health benefit plan or offer
11 standard health benefit plans with additional mandatory benefits
12 ~~[developed by the commissioner under Article 26.44A of this code~~
13 ~~and additional benefit riders to the plan]; and ~~[or]~~~~

14 (3) may offer a point-of-service contract in
15 connection with an insurance carrier that includes optional
16 coverage for out-of-area services, emergency care, or
17 out-of-network care.

18 SECTION 7. Article 26.72, Insurance Code, is amended by
19 amending Subsection (c) and adding Subsection (e) to read as
20 follows:

21 (c) Subsection (b) of this article does not apply to an
22 arrangement that provides compensation to an agent on the basis of
23 percentage of premium, provided that:

24 (1) the percentage may not vary because of health
25 status or claim experience; and

26 (2) the small employer carrier does not:

27 (A) exclude any additional premium charged to the

1 small employer because of health status or claims experience from
2 the premium amount to which the percentage is applied; or

3 (B) apply a smaller percentage to any additional
4 premium charged to the small employer because of health status or
5 claims experience than is applied to other premiums charged to the
6 small employer.

7 (e) A small employer carrier may not use an agent
8 compensation schedule that provides compensation in a specific
9 dollar amount for each individual covered during a specified period
10 or for each group of individuals covered during a specified period.

11 SECTION 8. Subdivision (2), Section 843.002, Insurance
12 Code, as effective June 1, 2003, is amended to read as follows:

13 (2) "Basic health care services" means health care
14 services that the commissioner determines an enrolled population
15 might reasonably need to be maintained in good health[~~, including,~~
16 ~~at a minimum, services designated as basic health services under~~
17 ~~Section 1302, Title XIII, Public Health Service Act (42 U.S.C.~~
18 ~~Section 300e-1(1))].~~

19 SECTION 9. Article 26.44A, Insurance Code, is repealed.

20 SECTION 10. (a) This Act takes effect September 1, 2003,
21 and applies only to an insurance policy, contract, or evidence of
22 coverage delivered, issued for delivery, or renewed on or after
23 January 1, 2004.

24 (b) Article 26.72, Insurance Code, as amended by this Act,
25 applies only to a small employer health benefit plan that is
26 delivered, renewed, or issued for delivery on or after January 1,
27 2004. A health benefit plan delivered or issued for delivery before

1 January 1, 2004, is governed by the law as it existed immediately
2 before the effective date of this Act, and that law is continued in
3 effect for that purpose.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 541 passed the Senate on April 15, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 29, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 541 passed the House, with amendments, on May 25, 2003, by the following vote: Yeas 99, Nays 14, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor