

BILL ANALYSIS

C.S.S.B. 809
By: Averitt
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, Texans who cannot obtain insurance through a private health insurance provider can obtain insurance through the Texas Health Insurance Risk Pool (pool). The pool is funded through an assessment paid by health insurance carriers. The assessment is based on the amount of premium collected by each health insurance carrier. C.S.S.B. 809 adds cost saving measures to the statutes governing the pool, provides that the assessment will be based on the number of lives covered by each insurance company, and adds subrogation rights for the pool.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 1506.002(b), Insurance Code, to redefine "health benefit plan."

SECTION 2. Amends Section 1506.109(a), Insurance Code, to require, rather than authorize, the Texas Health Insurance Risk Pool (pool) to provide for and use cost containment measures and requirements to make the coverage offered by the pool more cost-effective. Sets forth certain requirements for the cost containment measures. Makes nonsubstantive changes.

SECTION 3. Amends Section 1506.152(a), Insurance Code, to delete existing text pertaining to a notice of refusal by a health benefit plan issuer to issue substantially similar individual coverage except at a rate exceeding the pool rate.

SECTION 4. Amends Section 1506.155(a), Insurance Code, to include that except as provided by this section and Section 1506.056 (Adjustments), pool coverage excludes changes or expenses incurred before the first anniversary of the effective date of coverage with regard to any condition for which the existence of symptoms would cause an ordinarily prudent person to seek diagnosis, care, or treatment within the six-month period preceding the effective date of coverage.

SECTION 5. Amends Subchapter F, Chapter 1506, Insurance Code, by adding Section 1506.2522, requiring each health benefit plan issuer to report to the board of directors of the pool (board) the number of residents of this state, as of December 31 of the previous year, enrolled in the issuer's health benefits plans providing coverage for residents in this state. Sets forth certain requirements for determining the number of individuals to report under this section. Ten employees or retired employees covered by a health benefit plan issuer under a policy of excess loss insurance, stop-loss insurance or reinsurance count as one employee or retired employee for purposes of determining that health plan issuer's assessment.

SECTION 6. Amends Section 1506.253, Insurance Code, to make conforming changes and to require the board to compute the amount of a health benefit plan issuer's assessment. Sets forth new guidelines for this computation. Deletes existing text relating to the previous computation formula and the composition of gross health benefit plan premiums. Provides that certain small employer health benefit plans are not subject to an assessment under this subchapter.

SECTION 7. Amends Chapter 1506, Insurance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

C.S.S.B. 809 79(R)

Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY. Provides that the pool is subrogated to the rights of an individual covered by the pool to recover against a third party costs for an injury or illness for which the third party is liable under contract, tort law, or other law that have been paid by the pool on behalf of the covered individual. Authorizes the pool to enforce that liability on behalf of the individual.

Sec. 1506.302. BENEFITS NOT PAYABLE; ADVANCE OF BENEFITS AUTHORIZED. Provides that under coverage provided by the pool, benefits are not payable for an injury or illness for which a third party may be liable under contract, tort law, or other law. Authorizes the pool to advance to a covered individual the benefits provided under the pool coverage for medical expenses resulting from the injury or illness, subject to the pool's right to subrogation and reimbursement under this subchapter.

Sec. 1506.303. REIMBURSEMENT OF POOL REQUIRED. (a) Requires, subject to Section 1506.305, the amount recovered by a covered individual in an action against a third party who is liable for the injury or illness to be used to reimburse the pool for benefits for medical expenses that have been advanced under Section 1506.302.

(b) Provides that the amount of reimbursement required by this section is not reduced by the application of the doctrine established at common law relating to adequate compensation of insureds and commonly referred to as the "made whole" doctrine.

(c) Requires, subject to Section 1506.305, the pool to treat any amount recovered by a covered individual in an action against a third party who is liable for the injury or illness that exceeds the amount of the reimbursement required under this section as an advance against future medical benefits for the injury or illness that the individual would otherwise be entitled to receive under pool coverage.

Sec. 1506.304. RESUMPTION OF PAYMENT OF BENEFITS. Provides that if the amount treated as an advance under Section 1506.303(c) is adequate to cover all future medical costs for the covered individual's injury or illness, the pool is not required to resume the payment of benefits. Requires the pool, if the advance is insufficient, to resume the payment of benefits when the advance is exhausted.

Sec. 1506.305. ATTORNEY'S FEE FOR REPRESENTATION OF POOL'S INTEREST. (a) Provides that, for the purposes of this section, the pool's recovery includes certain amounts.

(b) Requires the pool, if the pool's interest is not actively represented by an attorney in a third-party action under this subchapter, to pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the pool. Requires, in the absence of an agreement, the court to make certain awards to the attorney payable out of the pool's recovery.

(c) Requires an attorney who represents a covered individual and is also to represent the interests of the pool under this subchapter to make a full written disclosure to the covered individual before employment as an attorney by the pool. Requires the covered individual to acknowledge the disclosure and consent to the representation. Requires a signed copy of the disclosure to be provided to the covered individual and the pool. Requires a copy of the disclosure with the covered individual's consent to be filed with the pleading before a judgment is entered and approved by the court. Prohibits the attorney from receiving a fee under this section to which the attorney is otherwise entitled under an agreement with the pool unless the attorney complies with the requirements of this subsection.

(d) Requires the court to award and apportion between the covered individual's and the pool's attorneys a fee payable out of the pool's subrogation recovery, if an attorney actively representing the pool's interest actively participates in obtaining a recovery. Requires the court in apportioning the award to consider the benefit accruing to the pool as a result of each attorney's service. Prohibits the total attorney's fees from exceeding one-third of the pool's recovery.

SECTION 8. (a) Makes application of this Act relating to an application for initial or renewal coverage through the Texas Health Insurance Risk Pool under Chapter 1506, Insurance Code, as amended by this Act, prospective.

(b) Makes application of Section 1506.155, Insurance Code, as amended by this Act, and Subchapter G, Chapter 1506, Insurance Code, as added by this Act prospective.

(c) Makes application of an assessment under Subchapter F, Chapter 1506, Insurance Code, as amended by this Act, prospective for calendar years occurring on or after the effective date.

(d) Requires the board of directors of the Pool to refund an assessment amount paid for a period after September 30, 2005, that is attributable to those coverages that are exempt from assessment because of the change to Section 1506.002(b), Insurance Code, such refund to be made at the time the final net loss for the period for which the assessment is made is determined.

(e) Makes application of an assessment under Section 1506.253, Insurance Code, as amended by this Act, prospective for calendar years occurring on or after the effective date.

(f) Provides that, notwithstanding Subsection (a) of this section and Section 1506.158 (Termination of Pool Coverage), Insurance Code, an individual who is covered by the pool on the effective date of this Act and who, because of the change in law made by this Act to Section 1506.152(a), Insurance Code, would not longer be eligible for coverage, continues to be eligible for coverage from the pool until the individual's coverage is terminated for a reason other than that change in law.

SECTION 9. (a) Provides that in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1506.002(b), Insurance Code, as set out in Section 1 of this Act, Section 1506.152(a), Insurance Code, as set out in Section 3 of this Act, and Sections 1506.253(a) and (c), Insurance Code, as set out in Section 6 of this Act, gives effect to changes made by Sections 1, 6, and 11, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003.

(b) Provides that to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. Effective date: January 1, 2006.

EFFECTIVE DATE

January 1, 2006

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 5 is revised to clarify counting of lives by the primary health benefit plan and by the health benefit plan providing excess loss insurance, stop loss insurance or reinsurance in subsection (b). New subsection (c) is added to provide that ten employees or retired employees covered by a health benefit plan issuer under a excess loss insurance, stop loss insurance or reinsurance count as one employee or retired employee for purposes of determining that health plan issuer's assessment.

New SECTION 8 (d) provides for a refund to be made by the Pool Board for the amount of assessment paid for the categories of premium covered by Section 1506.002(b) for the period after September 1, 2005, as of the time the final net loss for calendar year 2005 is determined