

BILL ANALYSIS

Senate Research Center
79R6423 DLF-D

S.B. 809
By: Averitt
State Affairs
4/4/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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. As proposed, 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1506.002(b), Insurance Code, as effective April 1, 2005, to redefine "health benefit plan."

SECTION 2. Amends Section 1506.109(a), Insurance Code, as effective April 1, 2005, to require, rather than authorize, the Texas Health Insurance Risk Pool (pool) to provide for and use cost containment measures 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, as effective April 1, 2005, 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, as effective April 1, 2005, to include that except as provide 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 D, Chapter 1506, Insurance Code, as effective April 1, 2005, by adding Sections 1506.160 and 1506.161, as follows:

Sec. 1506.160. REIMBURSEMENT RATES. Requires the health benefit coverage provided by the pool to provide payment or reimbursement for covered benefits to physicians and other health care providers at the lesser of certain rates.

Sec. 1506.161. MAIL-ORDER REQUIREMENT FOR CERTAIN PRESCRIPTION DRUGS. (a) Defines "maintenance drug."

(b) Requires, the board of directors of the Texas Health Insurance Risk Pool to establish a mail-order prescription drug program, if it decides it is cost-effective to provide prescription drugs in that manner. Requires, under the program, a covered individual to purchase maintenance drugs through the program. Requires maintenance drugs purchased through the program to be purchased in sufficient quantity to provide the covered individual a 90-day supply of the purchased drug.

SECTION 6. Amends Subchapter F, Chapter 1506, Insurance Code, as effective April 1, 2005, by adding Section 1506.2522, as follows:

Sec. 1506.2522. ANNUAL REPORT TO BOARD: ENROLLED INDIVIDUALS. Requires each health benefit plan issuer to report to the board the number of residents of this state, as of December 31 of the previous year, enrolled in the issuer's health benefits plans offered in this state. Sets forth certain requirements for determining the number of individuals to report under this section.

SECTION 7. Amends Section 1506.253, Insurance Code, as effective April 1, 2005, 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 8. Amends Chapter 1506, Insurance Code, as effective April 1, 2005, by adding Subchapter G, as follows:

SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

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, for the purposes of this section, that 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 9. (a) Makes application of this Act 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.

SECTION 10. (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 7 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 11. Effective date: September 1, 2005.