

By: Averitt

S.B. No. 809

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Health Insurance Risk Pool.

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

SECTION 1. Subsection (b), Section 1506.002, Insurance Code, is amended to read as follows:

(b) In this chapter, "health benefit plan" does not include:

(1) accident insurance;

(2) a plan providing coverage only for dental or vision care;

(3) fixed indemnity insurance, including hospital indemnity insurance;

(4) [~~(2)~~] credit insurance;

(5) [~~(3)~~] long-term care insurance;

(6) [~~(4)~~] disability income insurance;

(7) other limited benefit coverage, including specified disease coverage;

(8) [~~(5)~~] coverage issued as a supplement to liability insurance;

(9) [~~(6)~~] insurance arising out of a workers' compensation law or similar law;

(10) [~~(7)~~] automobile medical payment insurance; or

(11) [~~(8)~~] insurance coverage under which benefits are payable with or without regard to fault and that is statutorily required to be contained in a liability insurance policy or

1 equivalent self-insurance.

2 SECTION 2. Subsection (a), Section 1506.109, Insurance
3 Code, is amended to read as follows:

4 (a) The pool shall [~~may~~] provide for and use cost
5 containment measures and requirements to make the coverage offered
6 by the pool more cost-effective. To the extent the board determines
7 it is cost-effective, the cost containment measures must include
8 individual case management and disease management. The cost
9 containment measures may include [~~, including~~] preadmission
10 screening, the requirement of a second surgical opinion, and
11 concurrent utilization review subject to Article 21.58A [~~, and~~
12 ~~individual case management, to make the coverage offered by the~~
13 ~~pool more cost-effective]~~.

14 SECTION 3. Subsection (a), Section 1506.152, Insurance
15 Code, is amended to read as follows:

16 (a) An individual who is a legally domiciled resident of
17 this state is eligible for coverage from the pool if the individual:

18 (1) provides to the pool evidence that the individual
19 maintained health benefit plan coverage for the preceding 18 months
20 with no gap in coverage longer than 63 days and with the most recent
21 coverage being provided through an employer-sponsored plan, church
22 plan, or government plan;

23 (2) provides to the pool evidence that the individual
24 maintained health benefit plan coverage under another state's
25 qualified Health Insurance Portability and Accountability Act
26 health program that was terminated because the individual did not
27 reside in that state and submits an application for pool coverage

1 not later than the 63rd day after the date the coverage described by
2 this subdivision was terminated;

3 (3) has been a legally domiciled resident of this
4 state for the preceding 30 days, is a citizen of the United States
5 or has been a permanent resident of the United States for at least
6 three continuous years, and provides to the pool:

7 (A) a notice of rejection of, or refusal to
8 issue, substantially similar individual health benefit plan
9 coverage from a health benefit plan issuer, other than an insurer
10 that offers only stop-loss, excess loss, or reinsurance coverage,
11 if the rejection or refusal was for health reasons;

12 (B) certification from an agent or salaried
13 representative of a health benefit plan issuer that states that the
14 agent or salaried representative cannot obtain substantially
15 similar individual coverage for the individual from any health
16 benefit plan issuer that the agent or salaried representative
17 represents because, under the underwriting guidelines of the health
18 benefit plan issuer, the individual will be denied coverage as a
19 result of a medical condition of the individual;

20 (C) an offer to issue substantially similar
21 individual coverage only with conditional riders; or

22 (D) ~~[a notice of refusal by a health benefit plan~~
23 ~~issuer to issue substantially similar individual coverage except at~~
24 ~~a rate exceeding the pool rate; or~~

25 ~~[(E)]~~ a diagnosis of the individual with one of
26 the medical or health conditions on the list adopted under Section
27 1506.154; or

1 (4) provides to the pool evidence that, on the date of
2 application to the pool, the individual is certified as eligible
3 for trade adjustment assistance or for pension benefit guaranty
4 corporation assistance, as provided by the Trade Adjustment
5 Assistance Reform Act of 2002 (Pub. L. No. 107-210).

6 SECTION 4. Subsection (a), Section 1506.155, Insurance
7 Code, is amended to read as follows:

8 (a) Except as provided by this section and Section 1506.056,
9 pool coverage excludes charges or expenses incurred before the
10 first anniversary of the effective date of coverage with regard to
11 any condition for which:

12 (1) the existence of symptoms would cause an
13 ordinarily prudent person to seek diagnosis, care, or treatment
14 within the six-month period preceding the effective date of
15 coverage; or

16 (2) medical advice, care, or treatment was recommended
17 or received during the six-month period preceding the effective
18 date of coverage.

19 SECTION 5. Subchapter F, Chapter 1506, Insurance Code, is
20 amended by adding Section 1506.2522 to read as follows:

21 Sec. 1506.2522. ANNUAL REPORT TO BOARD: ENROLLED
22 INDIVIDUALS. (a) Each health benefit plan issuer shall report to
23 the board the number of residents of this state enrolled, as of
24 December 31 of the previous year, in the issuer's health benefit
25 plans offered in this state, as:

26 (1) an employee or retired employee under a group
27 health benefit plan; or

1 (2) an individual policyholder or subscriber.

2 (b) In determining the number of individuals to report under
3 Subsection (a)(1), the health benefit plan issuer shall include
4 each employee or retired employee for whom a premium is paid and
5 coverage is provided under an excess loss, stop-loss, or
6 reinsurance policy issued by the issuer to an employer or group
7 health benefit plan in this state. A health benefit plan issuer
8 providing excess loss insurance, stop-loss insurance, or
9 reinsurance, as described by this subsection, may exclude from the
10 reported number each individual who is reported by the primary
11 carrier or primary reinsurer.

12 (c) In determining the number of individuals to report under
13 this section, the health benefit plan issuer shall exclude:

14 (1) the dependents of the employee or retired employee
15 or an individual policyholder or subscriber; and

16 (2) individuals who are covered by the health benefit
17 plan issuer under a Medicare supplement benefit plan subject to
18 Chapter 1652.

19 SECTION 6. Section 1506.253, Insurance Code, is amended to
20 read as follows:

21 Sec. 1506.253. ASSESSMENTS TO COVER NET LOSSES. (a) The
22 board shall recover any net loss of the pool by assessing each
23 health benefit plan issuer an amount determined annually by the
24 board based on information in annual statements, the health benefit
25 plan issuer's annual report to the board under Sections [~~Section~~
26 1506.2521 and 1506.2522, and any other reports required by and
27 filed with the board.

1 (b) To compute the [The] amount of a health benefit plan
2 issuer's assessment, if any, the board shall:

3 (1) divide the total amount to be assessed by the total
4 number of enrolled individuals reported by all health benefit plan
5 issuers under Section 1506.2522 as of the preceding December 31 to
6 determine the per capita amount; and

7 (2) multiply the number of enrolled individuals
8 reported by the health benefit plan issuer under Section 1506.2522
9 as of the preceding December 31 by the per capita amount to
10 determine the amount assessed to that health benefit plan issuer
11 ~~[is computed by multiplying the total amount required to be~~
12 ~~assessed against all health benefit plan issuers by a number~~
13 ~~computed by dividing:~~

14 ~~[(1) the gross premiums collected by the issuer for~~
15 ~~health benefit plans in this state during the preceding calendar~~
16 ~~year; by~~

17 ~~[(2) the gross premiums collected by all issuers for~~
18 ~~health benefit plans in this state during the preceding calendar~~
19 ~~year].~~

20 (c) A ~~[For purposes of the assessment under this subchapter,~~
21 ~~gross health benefit plan premiums do not include premiums~~
22 ~~collected for:~~

23 ~~[(1) coverage under a Medicare supplement benefit plan~~
24 ~~subject to Chapter 1652,~~

25 ~~[(2) coverage under a]~~ small employer health benefit
26 plan subject to Subchapters A-H, Chapter 1501, is not subject to an
27 assessment under this subchapter ~~[, or~~

1 ~~[(3) coverage or insurance listed in Section~~
2 ~~1506.002(b)].~~

3 SECTION 7. Chapter 1506, Insurance Code, is amended by
4 adding Subchapter G to read as follows:

5 SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

6 Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY.

7 The pool:

8 (1) is subrogated to the rights of an individual
9 covered by the pool to recover against a third party costs for an
10 injury or illness for which the third party is liable under
11 contract, tort law, or other law that have been paid by the pool on
12 behalf of the covered individual; and

13 (2) may enforce that liability on behalf of the
14 individual.

15 Sec. 1506.302. BENEFITS NOT PAYABLE; ADVANCE OF BENEFITS
16 AUTHORIZED. (a) Under coverage provided by the pool, benefits are
17 not payable for an injury or illness for which a third party may be
18 liable under contract, tort law, or other law.

19 (b) Notwithstanding Subsection (a), the pool may advance to
20 a covered individual the benefits provided under the pool coverage
21 for medical expenses resulting from the injury or illness, subject
22 to the pool's right to subrogation and reimbursement under this
23 subchapter.

24 Sec. 1506.303. REIMBURSEMENT OF POOL REQUIRED.

25 (a) Subject to Section 1506.305, the amount recovered by a covered
26 individual in an action against a third party who is liable for the
27 injury or illness must be used to reimburse the pool for benefits

1 for medical expenses that have been advanced under Section
2 1506.302.

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

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

14 Sec. 1506.304. RESUMPTION OF PAYMENT OF BENEFITS. If the
15 amount treated as an advance under Section 1506.303(c) is adequate
16 to cover all future medical costs for the covered individual's
17 injury or illness, the pool is not required to resume the payment of
18 benefits. If the advance is insufficient, the pool shall resume the
19 payment of benefits when the advance is exhausted.

20 Sec. 1506.305. ATTORNEY'S FEE FOR REPRESENTATION OF POOL'S
21 INTEREST. (a) For purposes of this section, the pool's recovery
22 includes:

23 (1) the amount recovered by the pool in the action; and
24 (2) the amount of the covered individual's total
25 recovery that must be used to reimburse the pool or that is treated
26 as an advance for future medical costs under Section 1506.303(c).

27 (b) If the pool's interest is not actively represented by an

1 attorney in a third-party action under this subchapter, the pool
2 shall pay a fee to an attorney representing the claimant in the
3 amount agreed on between the attorney and the pool. In the absence
4 of an agreement, the court shall award to the attorney payable out
5 of the pool's recovery:

6 (1) a reasonable fee for recovery of the pool's
7 interest that may not exceed one-third of the pool's recovery; and

8 (2) a proportionate share of the reasonable expenses
9 incurred.

10 (c) An attorney who represents a covered individual and is
11 also to represent the interests of the pool under this subchapter
12 must make a full written disclosure to the covered individual
13 before employment as an attorney by the pool. The covered
14 individual must acknowledge the disclosure and consent to the
15 representation. A signed copy of the disclosure shall be provided
16 to the covered individual and the pool. A copy of the disclosure
17 with the covered individual's consent must be filed with the
18 pleading before a judgment is entered and approved by the court.
19 The attorney may not receive a fee under this section to which the
20 attorney is otherwise entitled under an agreement with the pool
21 unless the attorney complies with the requirements of this
22 subsection.

23 (d) If an attorney actively representing the pool's
24 interest actively participates in obtaining a recovery, the court
25 shall award and apportion between the covered individual's and the
26 pool's attorneys a fee payable out of the pool's subrogation
27 recovery. In apportioning the award, the court shall consider the

1 benefit accruing to the pool as a result of each attorney's service.
2 The total attorney's fees may not exceed one-third of the pool's
3 recovery.

4 SECTION 8. (a) This Act applies only to an application for
5 initial or renewal coverage through the Texas Health Insurance Risk
6 Pool under Chapter 1506, Insurance Code, as amended by this Act,
7 that is filed with that pool on or after the effective date of this
8 Act. An application filed before the effective date of this Act is
9 governed by the law in effect on the date on which the application
10 was filed, and the former law is continued in effect for that
11 purpose.

12 (b) Section 1506.155, Insurance Code, as amended by this
13 Act, and Subchapter G, Chapter 1506, Insurance Code, as added by
14 this Act, apply only to pool coverage that is delivered, issued for
15 delivery, or renewed on or after the effective date of this Act.
16 Pool coverage that is delivered, issued for delivery, or renewed
17 before the effective date of this Act is governed by the law as it
18 existed immediately before that date, and that law is continued in
19 effect for that purpose.

20 (c) This Act applies only to an assessment under Subchapter
21 F, Chapter 1506, Insurance Code, as amended by this Act, that is
22 made for a calendar year that begins on or after the effective date
23 of this Act. An assessment made for a calendar year that begins
24 before the effective date of this Act is governed by the law in
25 effect on the date on which the assessment was made, and the former
26 law is continued in effect for that purpose.

27 (d) Notwithstanding Subsection (a) of this section and

1 Section 1506.158, Insurance Code, an individual who is covered by
2 the Texas Health Insurance Risk Pool on the effective date of this
3 Act and who, because of the change in law made by this Act to
4 Subsection (a), Section 1506.152, Insurance Code, would no longer
5 be eligible for coverage, continues to be eligible for coverage
6 from the pool until the individual's coverage is terminated for a
7 reason other than that change in law.

8 SECTION 9. (a) In accordance with Subsection (c), Section
9 311.031, Government Code, which gives effect to a substantive
10 amendment enacted by the same legislature that codifies the amended
11 statute, the text of Subsection (b), Section 1506.002, Insurance
12 Code, as set out in Section 1 of this Act, Subsection (a), Section
13 1506.152, Insurance Code, as set out in Section 3 of this Act, and
14 Subsections (a) and (c), Section 1506.253, Insurance Code, as set
15 out in Section 6 of this Act, gives effect to changes made by
16 Sections 1, 6, and 11, Chapter 840, Acts of the 78th Legislature,
17 Regular Session, 2003.

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

22 SECTION 10. This Act takes effect January 1, 2006.