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. Section 1506.002(b), Insurance Code, as effective April 1, 2005, is amended to read as follows:

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

(1) short-term insurance;

(2) accident insurance;

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

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

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

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

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

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

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

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

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

(12) [~~(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 equivalent self-insurance.

SECTION 2. Section 1506.109(a), Insurance Code, as effective April 1, 2005, is amended to read as follows:

(a) The pool shall [~~may~~] provide for and use cost containment measures and requirements to make the coverage offered by the pool more cost-effective. The cost containment measures must include individual case management, disease management, and a mail-order prescription drug program in accordance with Section 1506.161 and may include [~~, including~~] preadmission screening, the requirement of a second surgical opinion, and concurrent utilization review subject to Article 21.58A[~~, and individual case management, to make the coverage offered by the pool more cost-effective~~].

SECTION 3. Section 1506.152(a), Insurance Code, as effective April 1, 2005, is amended to read as follows:

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

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

(2) provides to the pool evidence that the individual maintained health benefit plan coverage under another state's qualified Health Insurance Portability and Accountability Act health program that was terminated because the individual did not

reside in that state and submits an application for pool coverage not later than the 63rd day after the date the coverage described by this subdivision was terminated;

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

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

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

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

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

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

1506.154; or

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

SECTION 4. Section 1506.155(a), Insurance Code, as effective April 1, 2005, is amended to read as follows:

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

(1) 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; or

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

SECTION 5. Subchapter D, Chapter 1506, Insurance Code, as effective April 1, 2005, is amended by adding Sections 1506.160 and 1506.161 to read as follows:

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

(1) the rate specified in the contract between the

physician and other health care provider and the pool or a preferred provider organization or health maintenance organization established by or contracting with the pool; or

(2) the applicable Medicare allowable rate.

Sec. 1506.161. MAIL-ORDER REQUIREMENT FOR CERTAIN PRESCRIPTION DRUGS. (a) In this section, "maintenance drug" means a drug that is prescribed over a period of time for a chronic or continuing condition, as determined under rules adopted by the board with the approval of the commissioner.

(b) If the board determines it is cost-effective to provide prescription drugs through a mail-order prescription drug program, the board shall establish a mail-order prescription drug program. Under the program, a covered individual must purchase maintenance drugs through the program. Maintenance drugs purchased through the program must be purchased in sufficient quantity to provide the covered individual a 90-day supply of the purchased drug.

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

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

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

(2) an individual policyholder or subscriber.

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

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

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

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

SECTION 7. Section 1506.253, Insurance Code, as effective April 1, 2005, is amended to read as follows:

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

(b) To compute the [~~The~~] amount of a health benefit plan

issuer's assessment, if any, the board shall:

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

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

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

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

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

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

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

[~~(3) coverage or insurance listed in Section~~

~~1506.002(b)~~].

SECTION 8. Chapter 1506, Insurance Code, as effective April 1, 2005, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY. The pool:

(1) 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; and

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

Sec. 1506.302. BENEFITS NOT PAYABLE; ADVANCE OF BENEFITS AUTHORIZED. (a) 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.

(b) Notwithstanding Subsection (a), the pool may 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) 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 must be used to reimburse the pool for benefits for medical expenses that have been advanced under Section

1506.302.

(b) 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) Subject to Section 1506.305, the pool shall 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. 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. If the advance is insufficient, the pool shall resume the payment of benefits when the advance is exhausted.

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

(1) the amount recovered by the pool in the action; and

(2) the amount of the covered individual's total recovery that must be used to reimburse the pool or that is treated as an advance for future medical costs under Section 1506.303(c).

(b) If the pool's interest is not actively represented by an attorney in a third-party action under this subchapter, the pool

shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the pool. In the absence of an agreement, the court shall award to the attorney payable out of the pool's recovery:

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

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

(c) An attorney who represents a covered individual and is also to represent the interests of the pool under this subchapter must make a full written disclosure to the covered individual before employment as an attorney by the pool. The covered individual must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be provided to the covered individual and the pool. A copy of the disclosure with the covered individual's consent must be filed with the pleading before a judgment is entered and approved by the court. The attorney may not receive 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) If an attorney actively representing the pool's interest actively participates in obtaining a recovery, the court shall award and apportion between the covered individual's and the pool's attorneys a fee payable out of the pool's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the pool as a result of each attorney's service.

The total attorney's fees may not exceed one-third of the pool's recovery.

SECTION 9. (a) This Act applies only 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, 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.

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

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

SECTION 10. (a) 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) 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. This Act takes effect September 1, 2005.