

BILL ANALYSIS

C.S.H.B. 2453
By: Eiland
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Businesses with 20 or more full-time employees offer COBRA continuation of coverage for employer-sponsored health insurance. This provides workers and their dependents with the ability to remain on the company's health insurance plan by paying both the employee's and the employer's share of the premium plus a two percent fee to cover administrative expenses. Many laid-off workers are unable to afford 102 percent of health insurance premiums after a job loss, but for those who can, COBRA offers an option to maintain continuous health insurance coverage. COBRA coverage must be elected in writing within 60 days of termination and coverage lasts up to 18 months for former employees and up to 36 months for the dependents of former employees.

Texas has a state continuation provision similar to COBRA coverage, which allows former employees to continue health insurance coverage for six months. Employees of small businesses with fewer than 20 full-time workers are not eligible for COBRA and only have access to state continuation coverage. State continuation coverage is also available to workers eligible for COBRA, who can access their six-month state continuation period after their COBRA coverage ends. Conversion permits employees whose employer undergoes a business failure or stops offering coverage to buy an individual health insurance policy from the same insurer with no preexisting condition limitation. Conversion policies must offer benefits similar to the previous group policy and premiums are capped at twice the rates charged under the previous group policy. Texas law allows health insurance companies to offer a conversion privilege, but it is not required. Texas is one of just 13 states that lack a mandatory group conversion provision. While the premium assistance in the federal recovery legislation is not available for conversion coverage, ensuring the availability of this coverage for laid-off Texas workers who could afford the premiums would reduce the number of Texans left uninsured by business failures or elimination of benefit programs resulting from the economic downturn.

C.S.H.B. 2453 assists employees and newly unemployed persons in maintaining access to employer-sponsored health insurance.

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

C.S.H.B. 2453 amends the Insurance Code, to require an employer or group policy or contract holder, not later than the 60th day after the effective date of S.B. 1771, 81st Legislature, Regular Session, 2009, to provide notice to any former employee, member, dependent, or enrollee who is an extended election eligible individual that includes a description of the extended election period available to the individual under these provisions; a description, displayed in a prominent manner, of the individual's right to a reduced premium and any conditions on entitlement to the reduced premium under the American Recovery and Reinvestment Act of 2009 (ARRA); a form

that allows the individual to request treatment as an assistance eligible individual, as defined by ARRA, to whom the premium subsidy would apply; the cost of continuation coverage and the period of coverage available; an election form that includes the return address and the due date for making the election; and notice that if the individual is entitled to the reduced premium and later becomes eligible for other group health plan coverage or Medicare, the individual must notify the employer in writing or the individual may be subject to a tax penalty. The bill authorizes an extended election eligible individual to elect continuation coverage beginning on the effective date of this bill and ending on the 60th day after the date on which the required notice is provided to the eligible individual. The bill specifies that the period of continuation coverage for an extended election eligible individual who elects continuation coverage begins with the first period of coverage beginning on or after the effective date of S.B. 1771 and does not extend beyond the date the period of continuation coverage would have ended if the coverage had been elected during the election period required under the law as it existed before that senate bill's effective date. The bill requires the 60-day election period to be disregarded for purposes of determining a 63-day period referred to in federal and state law as creditable coverage for preexisting conditions. The bill defines an "extended election eligible individual" to mean an employee, member, dependent, or enrollee who became eligible for continuation coverage due to involuntary termination, other than involuntary termination for cause, at any time during the period that begins on September 1, 2008, and ends on February 16, 2009, who did not elect such coverage or whose elected continuation coverage lapsed or was canceled without reinstatement for a reason other than exhaustion of the maximum period of continuation coverage allowable under law, and whose involuntary termination on which the eligibility is based occurred during that same period. The bill establishes that the above provisions expire September 1, 2013.

C.S.H.B. 2453 extends the deadline by which an employee, member, or dependent must provide to the employer or group policyholder a written request for the continuation of group coverage from not later than the 31st day to not later than the 60th day after the later of the date the group coverage would otherwise terminate or the date the individual is given, in a format prescribed by the commissioner of insurance, notice by either the employer or the group policyholder of the right to continuation of group coverage. The bill requires the initial payment of contributions to the employer or group policyholder by an individual who elects to continue group coverage to be made not later than the 45th day after the date of the initial election for coverage and on the due date of each payment thereafter. The bill establishes that, following that first payment, the payment of any other premium is considered timely if made on or before the 30th day after the date on which the payment is due, and makes conforming changes. The bill amends the options for the earliest date on which group coverage continued under these provisions is authorized to terminate to include the date the maximum continuation period provided by law would end, which is for any employee, member, or dependent not eligible for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), nine months after the date the employee, member, or dependent elects to continue the group coverage or, for any employee, member, or dependent eligible for continuation coverage under COBRA, six additional months following any period of continuation coverage provided under COBRA. The bill removes as an option six months after the date the employee, member, or dependent elects to continue the group coverage and specifies that the option of the date on which similar benefits are provided or available to the insured under any state or federal law excludes continuation coverage under (COBRA). The bill applies the above provisions relating to group coverage including a request for continuation of coverage, payment of contributions, and the termination of continued coverage to an enrollee, to provisions relating to benefits provided by a health maintenance organization (HMO) plan.

C.S.H.B. 2453 provides that an individual eligible for benefits from the continuation of coverage under a group or blanket insurance policy or HMO plan, who did not elect continuation coverage during the election period or whose elected continuation coverage lapsed or was canceled without reinstatement is eligible for coverage under the Texas Health Insurance Risk Pool and specifies that eligibility is subject to a 180-day exclusion of coverage under statutory provisions

relating to preexisting conditions. The bill provides that the 180-day exclusion of coverage does not apply to an individual eligible for benefits from the continuation of coverage who did not elect continuation coverage during the election period or whose elected continuation coverage lapsed or was canceled without reinstatement, following a period of continuation coverage under COBRA. The bill establishes that pool coverage for an individual eligible under these provisions excludes charges or expenses incurred before the expiration of 180 days from the effective date of coverage with regard to certain preexisting conditions.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2453 adds temporary provisions not in the original authorizing an extended election eligible individual to elect continuation coverage under a group or blanket insurance or HMO plan.

C.S.H.B. 2453 differs from the original by clarifying that the written request for the continuation of group coverage be provided to the employer or group policyholder.

C.S.H.B. 2453 adds provisions not in the original requiring a payment of contributions by an individual who elects to continue group coverage to be made not later than the 45th day after the date of the initial election for coverage and, following the initial payment, requiring the payment to be made on or before the 30th day after the date on which the payment is due. The substitute differs from the original by removing a provision requiring the employee's, member's, or dependent's written election for continuation of group coverage, together with the first contribution required to establish advance monthly contributions, to be given to the employer or policyholder not later than the later of the 31st day after the date coverage would otherwise terminate; or the date the individual is given notice by either the employer or the group policyholder of the right to continuation of group coverage, whereas the original retains this provision but amends an optional submission date to be the 60th day, rather than the 31st day, after the date coverage would otherwise terminate.

C.S.H.B. 2453 differs from the original by revising a provision relating to the termination of continued coverage so that a distinction is made between an employee, member, or dependent not eligible for continuation coverage under COBRA and an employee, member, or dependent eligible for continuation coverage under COBRA, where as the original makes no such distinction. The substitute and original revise the optional earliest termination dates differently.

C.S.H.B. 2453 adds provisions not in the original applying provisions relating to a request for continuation of group coverage, payment of contributions, and the termination of continued coverage to an enrollee under an HMO plan.

C.S.H.B. 2453 removes language in the original requiring an insurer to offer a conversion policy to each employee, member, or dependent covered under a group accident and health insurance policy that is terminating, and making provisions of the bill applicable to a conversion policy or contract or evidence of contract that was delivered, issued for delivery, or renewed on or after September 1, 2008.

C.S.H.B. 2453 adds provisions not in the original providing that certain individuals eligible for benefits from the continuation of coverage under a group or blanket insurance or HMO plan are eligible for pool coverage and specifying that the 180-day exclusion of coverage for preexisting conditions does not apply to eligible individuals who did not elect continuation coverage during the election period or whose elected continuation coverage lapsed or was canceled without

reinstatement following a period of continuation coverage under COBRA.

C.S.H.B. 2453 adds saving provisions and prospective clauses not in the original.