

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1771
By: Duncan
State Affairs
4/9/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Businesses with 20 or more full-time employees offer Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA) continuation coverage, allowing workers and their dependents the option to retain coverage under the company's health insurance for 18 months and 36 months, respectively. These individuals are required to pay the entire cost of the premium plus an administrative fee. For businesses with fewer than 20 full-time employees, Texas offers a state continuation coverage, similar to COBRA, for six months.

The American Recovery and Reinvestment Act of 2009 provides for a 65 percent premium assistance program for COBRA and state continuation coverage programs. Because Texas' state continuation coverage is only for six months, as opposed to 18-month COBRA coverage, former employees of businesses with fewer than 20 full-time employees are unable to access health insurance coverage and the federal premium assistance program for an equal period of time.

C.S.S.B. 1771 amends the Insurance Code to align the state continuation coverage time periods to match that of COBRA continuation coverage by extending state continuation coverage from six months to nine months.

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 Subtitle A, Title 8, Insurance Code, by adding Chapter 1202A, as follows:

CHAPTER 1202A. TEMPORARY EXTENSION OF ELECTION PERIOD FOR CONTINUATION OF CERTAIN COVERAGE

Sec. 1202A.001. EXTENSION OF ELECTION PERIOD. (a) Defines "extended election eligible individual."

(b) Authorizes an extended election eligible individual, notwithstanding Section 1251.253 or 1271.301 (Entitlement to Continuation of Group Coverage), to elect continuation coverage under this section beginning on the effective date of this Act and ending on the 60th day after the date on which the notification required by Subsection (e) is provided to the individual.

(c) Provides 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 Senate Bill 1771, Acts of the 81st Legislature, Regular Session, 2009, 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 the effective date of Senate Bill 1771, Acts of the 81st Legislature, Regular Session, 2009.

(d) Requires that the period beginning on the date the individual first becomes eligible for continuation coverage and ending on the first day of the 60-day

election period described by Subsection (b), with respect to an individual who elects continuation coverage under Subsection (b), be disregarded for purposes of determining a 63-day period referred to in 29 U.S.C. Section 1181(c)(2), 42 U.S.C. Section 300gg(c)(2), 26 U.S.C. Section 9801(c)(2), and Sections 846.202(d) (relating to a preexisting condition provision in a multiple employer welfare arrangement's plan document), 1501.102 (Preexisting Condition Provision), and 1506.001(8) (relating to the definition of a significant break in coverage).

(e) Requires an employer or group policy or contract holder, not later than the 60th day after the effective date of Senate Bill 1771, Acts of the 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:

- (1) a description of the extended election period available to the individual under this section;
- (2) 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;
- (3) a form that allows the individual to request treatment as an assistance eligible individual, as defined by the American Recovery and Reinvestment Act of 2009, to whom the premium subsidy would apply;
- (4) the amount continuation coverage will cost and the period of coverage available;
- (5) an election form that includes the return address and the due date for making the election; and
- (6) 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 is required to notify the employer in writing or the individual may be subject to a tax penalty.

Sec. 1202A.002. EXPIRATION OF CHAPTER. Provides that this chapter expires September 1, 2013.

SECTION 2. Amends Section 1251.253, Insurance Code, as follows:

Sec. 1251.253. REQUEST FOR CONTINUATION OF GROUP COVERAGE. Requires an employee, member, or dependent to provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of certain dates, rather than request in writing the continuation of group coverage not later than the 31st day after the later of certain dates.

SECTION 3. Amends Section 1251.254, Insurance Code, as follows:

Sec. 1251.254. PAYMENT OF CONTRIBUTIONS. Creates this section from existing Subsection (a). Requires an employee, member, or dependent who elects to continue group coverage under this subchapter, except as provided by this section, to pay to the employer or group policyholder each month, rather than each month in advance, the amount of contribution required by the employer or policyholder, plus two percent of the group rate for the coverage being continued under the group policy, rather than under the group policy on the due date of each payment. Requires that a payment under this section 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. Requires that the payment of any other premium, following the first payment made after the initial election for

coverage, be considered timely if made on or before the 30th day after the date on which the payment is due. Deletes existing Subsection (b) requiring that 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 be given to the employer or policy holder not later than the later of certain dates.

SECTION 4. Amends Section 1251.255, Insurance Code, as follows:

Sec. 1251.255. TERMINATION OF CONTINUED COVERAGE. (a) Prohibits group coverage continued under this subchapter from terminating until the earliest of certain dates, including 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 Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA), 9 months, rather than six 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 date similar benefits are provided or available to the insured under any state or federal law other than continuation coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA).

(b) Requires the insurer, not later than the 30th day before the end of the continuation period described by Subsection (a)(1) that is applicable to the individual, rather than six months after the date the employee, member, or dependent elects to continue group coverage under the policy, to perform certain actions.

SECTION 5. Amends 1271.302, Insurance Code, to require an enrollee to provide to the employer or group contract holder a written notice of election to continue group coverage under this subchapter not later than the 60th day after the later of certain dates, rather than requiring an enrollee to make a written election to continue group coverage under this subchapter and pay the first contribution required to establish contributions on an advance monthly basis to the employer or group contract holder not later than the 31st day after the later of certain dates.

SECTION 6. Amends Section 1271.303(b), Insurance Code, to require the enrollee to make the payment not later than the 45th day after the initial election for coverage and on the due date of each payment thereafter. Requires that the payment of any other premium, following the first payment made after the initial election for coverage, be considered timely if made by the 30th day after the date on which payment is due, rather than requiring the enrollee to make the payment in advance on a monthly basis on the due date of each payment.

SECTION 7. Amends Section 1271.304, Insurance Code, as follows:

Sec. 1271.304. TERMINATION OF CONTINUED COVERAGE. Prohibits group continued coverage under this subchapter from terminating until the earliest of certain dates, including the date the maximum continuation period provided by law would end, which is for any enrollee not eligible for continuation coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA), the end of the 9-month, rather than six-month, period after the date the election to continue coverage is made; or for any enrollee eligible for continuation coverage under COBRA, six additional months following any period of continuation provided under that statute.

SECTION 8. Amends Section 1271.305(a), Insurance Code, to require the health maintenance organization, at least 30 days before the end of the continuation period, rather than six month period, described by Section 1271.304(1), relating to the date the maximum continuation period provided by law would end, that is applicable to the enrollee, rather than after the date an enrollee elects to continue group coverage, to notify the enrollee that the enrollee is authorized to be eligible for coverage under the Texas Health Insurance Risk Pool as provided by Chapter 1506 (Texas Health Insurance Risk Pool).

SECTION 9. Amends Section 1506.153, Insurance Code, by adding Subsections (c) and (d), as follows:

(c) Provides that an individual eligible for benefits from the continuation of coverage under Subchapter F (Continuation or Conversion Privilege on Termination of Coverage Under Group Policy) or G (Continuation of Group Coverage for Certain Family Members and Dependents), Chapter 1251 (Group and Blanket Health Insurance), or Subchapter G (Continuation of Coverage, Conversion Contracts, and Renewal), Chapter 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), who did not elect continuation of coverage during the election period, or whose elected continuation of coverage lapsed or was canceled without reinstatement, is eligible for pool coverage. Provides that eligibility under this subsection is subject to a 180-day exclusion of coverage under Section 1506.155(a-1).

(d) Provides that the 180-day exclusion of coverage provided under Subsection (c) does not apply to an individual eligible for benefits from the continuation of coverage under Subchapter F or G, Chapter 1251, or Subchapter G, Chapter 1271, 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 Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA).

SECTION 10. Amends Section 1506.155(a-1), Insurance Code, to provide that pool coverage for an individual eligible pursuant to Section 1506.153(b) (relating to the eligibility for pool coverage of certain individuals) or (c), except as provided by Section 1506.056 (Adjustments), excludes charges or expenses incurred before the expiration of 180 days from the effective date of coverage with regard to certain conditions.

SECTION 11. (a) Provides that Sections 1251.253 and 1271.302, Insurance Code, as amended by this Act, apply only to:

(1) a request for continuation of group coverage that an employee, member, dependent, or enrollee becomes eligible to make on or after the effective date of this Act; or

(2) a request for continuation of group coverage that an employee, member, dependent, or enrollee became eligible to make before the effective date of this Act, provided that the election period available to the employee, member, dependent, or enrollee under Section 1251.253 or 1271.302, Insurance Code, as those sections existed before amendment by this Act, has not expired as of the effective date of this Act.

(b) Provides that a request for continuation of group coverage that an employee, member, dependent, or enrollee became eligible to make before the effective date of this Act and that, on the effective date of this Act, the employee, member, dependent, or enrollee is no longer eligible to make, is governed by the law as it existed before the effective date of this Act, and that law is continued in effect for that purpose. Provides that this subsection does not apply to an employee, member, dependent, or enrollee who is an extended election eligible individual to whom Chapter 1202A, Insurance Code, as added by this Act, applies.

SECTION 12. Makes application of Sections 1251.254 and 1271.303, Insurance Code, as amended by this Act, prospective.

SECTION 13. Provides that Sections 1251.255 and 1271.304, Insurance Code, as amended by this Act, apply to coverage for which an election to continue was made on or after the effective date of this Act.

SECTION 14. Effective date: upon passage or September 1, 2009.