

By: Alvarado

H.B. No. 3120

A BILL TO BE ENTITLED

AN ACT

relating to the maximum allowable premium rate increase for small employer health benefit plans.

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

SECTION 1. Subchapter D, Chapter 501, Insurance Code, is amended by amending Sections 501.151 and 501.153 and adding Section 501.160 to read as follows:

Sec. 501.151. POWERS AND DUTIES OF OFFICE. The office:

(1) may assess the impact of insurance rates, rules, and forms on insurance consumers in this state; ~~and~~

(2) shall advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of insurance consumers; and

(3) shall accept from a small employer, an eligible employee, or an eligible employee's dependent and, if appropriate, refer to the commissioner, a complaint described by Section 501.160.

Sec. 501.153. AUTHORITY TO APPEAR, INTERVENE, OR INITIATE.

The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner or department on behalf of insurance consumers, as a class, in matters involving:

(A) rates, rules, and forms affecting:

(i) property and casualty insurance;

- 1 (ii) title insurance;
- 2 (iii) credit life insurance;
- 3 (iv) credit accident and health insurance;

4 or

- 5 (v) any other line of insurance for which
- 6 the commissioner or department promulgates, sets, adopts, or
- 7 approves rates, rules, or forms;

8 (B) rules affecting life, health, or accident
9 insurance; or

10 (C) withdrawal of approval of policy forms:

11 (i) in proceedings initiated by the
12 department under Sections 1701.055 and 1701.057; or

13 (ii) if the public counsel presents
14 persuasive evidence to the department that the forms do not comply
15 with this code, a rule adopted under this code, or any other law;

16 (2) may initiate or intervene as a matter of right or
17 otherwise appear in a judicial proceeding involving or arising from
18 an action taken by an administrative agency in a proceeding in which
19 the public counsel previously appeared under the authority granted
20 by this chapter;

21 (3) may appear or intervene, as a party or otherwise,
22 as a matter of right on behalf of insurance consumers as a class in
23 any proceeding in which the public counsel determines that
24 insurance consumers are in need of representation, except that the
25 public counsel may not intervene in an enforcement or *parens*
26 *patriae* proceeding brought by the attorney general; ~~and~~

27 (4) may appear or intervene before the commissioner or

1 department as a party or otherwise on behalf of small commercial
2 insurance consumers, as a class, in a matter involving rates,
3 rules, or forms affecting commercial insurance consumers, as a
4 class, in any proceeding in which the public counsel determines
5 that small commercial consumers are in need of representation; and

6 (5) may appear before the commissioner on behalf of a
7 small employer, eligible employee, or eligible employee's
8 dependent in a complaint the office refers to the commissioner
9 under Section 501.160.

10 Sec. 501.160. COMPLAINT RESOLUTION FOR CERTAIN PREMIUM RATE
11 INCREASES. (a) A small employer, an eligible employee, or an
12 eligible employee's dependent may file a complaint with the office
13 alleging that a rate is excessive for the risks to which the rate
14 applies, if the percentage increase in the premium rate charged to a
15 small employer under Subchapter E, Chapter 1501, for a new rating
16 period exceeds 10 percent.

17 (b) The office shall refer a complaint received under
18 Subsection (a) to the commissioner if the office determines that
19 the complaint substantially attests to a rate charged that is
20 excessive for the risks to which the rate applies.

21 (c) With respect to a complaint filed under Subsection (a),
22 the office may issue a subpoena applicable throughout the state
23 that requires the production of records.

24 (d) On application of the office in the case of disobedience
25 of a subpoena, a district court may issue an order requiring any
26 individual or person, including a small employer health benefit
27 plan issuer described by Section 1501.002, that is subpoenaed to

1 obey the subpoena and produce records, if the individual or person
2 has refused to do so. An application under this subsection must be
3 made in a district court in Travis County.

4 SECTION 2. Section 1501.204, Insurance Code, is amended to
5 read as follows:

6 Sec. 1501.204. INDEX RATES. Under a small employer health
7 benefit plan:

8 (1) the index rate for a class of business may not
9 exceed the index rate for any other class of business by more than
10 15 [~~20~~] percent; and

11 (2) premium rates charged during a rating period to
12 small employers in a class of business with similar case
13 characteristics for the same or similar coverage, or premium rates
14 that could be charged to those employers under the rating system for
15 that class of business, may not vary from the index rate by more
16 than 20 [~~25~~] percent.

17 SECTION 3. Section 1501.205, Insurance Code, is amended by
18 adding Subsection (d) to read as follows:

19 (d) A small employer health benefit plan issuer shall
20 disclose the risk load assessed to a small employer group to the
21 group, along with a description of the risk characteristics
22 material to the risk load assessment.

23 SECTION 4. Section 1501.206(a), Insurance Code, is amended
24 to read as follows:

25 (a) The percentage increase in the premium rate charged to a
26 small employer for a new rating period may not exceed the sum of:

27 (1) the percentage change in the new business premium

1 rate, measured from the first day of the preceding rating period to
2 the first day of the new rating period;

3 (2) any adjustment, not to exceed 10 [~~15~~] percent
4 annually and adjusted pro rata for a rating period of less than one
5 year, due to the claims experience, health status, or duration of
6 coverage of the employees or dependents of employees of the small
7 employer, as determined under the small employer health benefit
8 plan issuer's rate manual for the class of business; and

9 (3) any adjustment, not to exceed five percent
10 annually and adjusted pro rata for a rating period of less than one
11 year, due to change in coverage or change in the case
12 characteristics of the small employer, as determined under the
13 issuer's rate manual for the class of business.

14 SECTION 5. Subchapter E, Chapter 1501, Insurance Code, is
15 amended by adding Section 1501.2131 and amending Section 1501.214
16 to read as follows:

17 Sec. 1501.2131. COMPLAINT FACILITATION FOR PREMIUM RATE
18 ADJUSTMENTS. If the percentage increase in the premium rate
19 charged to a small employer for a new rating period exceeds 10
20 percent, the small employer, an eligible employee, or an eligible
21 employee's dependent may file a complaint with the office of public
22 insurance counsel as provided by Section 501.160.

23 Sec. 1501.214. ENFORCEMENT. (a) Subject to Subsection
24 (b), if [~~if~~] the commissioner determines that a small employer
25 health benefit plan issuer subject to this chapter exceeds the
26 applicable premium rate established under this subchapter, the
27 commissioner may order restitution and assess penalties as provided

1 by Chapter 82.

2 (b) The commissioner shall enter an order under this section
3 if the commissioner makes the finding described by Section
4 1501.653.

5 SECTION 6. Chapter 1501, Insurance Code, is amended by
6 adding Subchapter N to read as follows:

7 SUBCHAPTER N. RESOLUTION OF CERTAIN COMPLAINTS AGAINST SMALL
8 EMPLOYER HEALTH BENEFIT PLAN ISSUERS

9 Sec. 1501.651. DEFINITIONS. In this chapter:

10 (1) "Honesty-in-premium account" means the account
11 established under Section 1501.656.

12 (2) "Office" means the office of public insurance
13 counsel.

14 Sec. 1501.652. COMPLAINT RESOLUTION PROCEDURE. (a) On the
15 receipt of a referral of a complaint from the office of public
16 insurance counsel under Section 501.160, the commissioner shall
17 request written memoranda from the office and the small employer
18 health benefit plan issuer that is the subject of the complaint.

19 (b) After receiving the initial memoranda described by
20 Subsection (a), the commissioner may request one rebuttal
21 memorandum from the office.

22 (c) The commissioner may by rule limit the number of
23 exhibits submitted with or the time frame allowed for the submittal
24 of the memoranda described by Subsection (a) or (b).

25 Sec. 1501.653. ORDER; FINDINGS. The commissioner shall
26 issue an order under Section 1501.214(b), if the commissioner
27 determines that the rate complained of is excessive for the risks to

1 which the rate applies.

2 Sec. 1501.654. COSTS. The office may request, and the
3 commissioner may award to the office, reasonable costs and fees
4 associated with the investigation and resolution of a complaint
5 filed under Section 501.160 and disposed of in accordance with this
6 subchapter.

7 Sec. 1501.655. ASSESSMENT. (a) The commissioner may make
8 an assessment against each small employer health benefit plan
9 issuer in an amount that is sufficient to cover the costs of
10 investigating and resolving a complaint filed under Section 501.160
11 and disposed of in accordance with this subchapter.

12 (b) The commissioner shall deposit assessments collected
13 under this section to the credit of the honesty-in-premium account.

14 Sec. 1501.656. HONESTY-IN-PREMIUM ACCOUNT. (a) The
15 honesty-in-premium account is an account in the general revenue
16 fund that may be appropriated only to cover the cost associated with
17 the investigation and resolution of a complaint filed under Section
18 501.160 and disposed of in accordance with this subchapter.

19 (b) Interest earned on the honesty-in-premium account shall
20 be credited to the account. The account is exempt from the
21 application of Section 403.095, Government Code.

22 Sec. 1501.657. RATE REDUCTION NOT PROHIBITED. Nothing in
23 this subchapter prohibits a small employer health benefit plan
24 issuer from, at any time, offering a different rate to the group
25 whose rate is the subject of a complaint.

26 SECTION 7. The change in law made by Chapter 1501, Insurance
27 Code, as amended by this Act, applies only to a small employer

1 health benefit plan that is delivered, issued for delivery, or
2 renewed on or after January 1, 2010. A small employer health
3 benefit plan that is delivered, issued for delivery, or renewed
4 before January 1, 2010, is covered by the law in effect at the time
5 the health benefit plan was delivered, issued for delivery, or
6 renewed, and that law is continued in effect for that purpose.

7 SECTION 8. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.