

By: Shapleigh

S.B. No. 350

A BILL TO BE ENTITLED

AN ACT

relating to the application for and continuation of certain health benefit plan coverage; providing a civil penalty.

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

SECTION 1. Subtitle A, Title 8, Insurance Code, is amended by adding Chapters 1217 and 1218 to read as follows:

CHAPTER 1217. APPLICATION FOR HEALTH BENEFIT PLAN COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1217.001. DEFINITION OF INDIVIDUAL HEALTH BENEFIT PLAN. (a) Except as otherwise provided by this section, in this chapter, "individual health benefit plan" means:

(1) an individual accident and health insurance policy to which Chapter 1201 applies; or

(2) individual health maintenance organization coverage.

(b) The term does not include:

(1) disability income insurance coverage; or

(2) long-term care insurance coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits.

[Sections 1217.002-1217.050 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR COVERAGE

Sec. 1217.051. APPLICATION ASSISTANCE; CIVIL PENALTY.

1 (a) A life, accident, and health agent who assists an applicant in
2 submitting an application to a health benefit plan issuer:

3 (1) has a duty to assist the applicant in providing
4 answers to health questions accurately and completely; and

5 (2) shall attest on the written application that:

6 (A) to the best of the agent's knowledge, the
7 information on the application is complete and accurate;

8 (B) the agent explained to the applicant, in
9 easy-to-understand language, the risk to the applicant of providing
10 inaccurate information; and

11 (C) the applicant understood the explanation
12 provided under Paragraph (B).

13 (b) For the purposes of Subsection (a)(2)(C), the agent may
14 request that the applicant attest in writing on the application or a
15 separate document that the applicant understood the explanation
16 provided under Subsection (a)(2)(B).

17 (c) If, in an attestation required by Subsection (a), an
18 agent wilfully states as true any material fact the agent knows to
19 be false, the agent, in addition to any other penalty or remedy
20 available by law, is liable for a civil penalty in an amount not to
21 exceed \$10,000.

22 (d) The attorney general or a county or district attorney
23 may bring an action to recover a civil penalty under Subsection (c).
24 The penalty shall be deposited in the general revenue fund, except
25 that for a penalty recovered in a suit first instituted by a local
26 government or governments under this subsection, 50 percent of the
27 recovery shall be deposited in the general revenue fund and the

1 other 50 percent shall be equally distributed to the local
2 government or governments that instituted the suit.

3 (e) An application for health benefit plan coverage shall
4 include a statement advising affiants of the civil penalty
5 authorized under this section.

6 CHAPTER 1218. RESCISSION OF HEALTH BENEFIT PLAN COVERAGE

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 1218.001. DEFINITION. (a) Except as provided by this
9 section, in this chapter, "individual health benefit plan" means:

10 (1) an individual accident and health insurance policy
11 to which Chapter 1201 applies; or

12 (2) individual health maintenance organization
13 coverage.

14 (b) The term does not include:

15 (1) disability income insurance coverage; or

16 (2) long-term care insurance coverage or benefits,
17 nursing home care coverage or benefits, home health care coverage
18 or benefits, community-based care coverage or benefits, or any
19 combination of those coverages or benefits.

20 [Sections 1218.002-1218.050 reserved for expansion]

21 SUBCHAPTER B. RESCISSION

22 Sec. 1218.051. INDIVIDUAL HEALTH BENEFIT PLAN:
23 CONTINUATION OF COVERAGE. (a) An individual health benefit plan
24 issuer that intends to rescind an individual health benefit plan
25 policy or contract shall:

26 (1) offer to each other individual covered under the
27 policy or contract the opportunity to obtain a new individual

1 health benefit plan policy or contract with benefits equal to those
2 of the rescinded policy or contract; or

3 (2) permit an individual otherwise entitled to an
4 offer of coverage under Subdivision (1) to remain covered under the
5 policy or contract with a revised premium rate to reflect any
6 reduction in the number of individuals covered by the policy or
7 contract.

8 (b) An individual health benefit plan issuer is not required
9 to continue existing coverage of or issue new coverage to an
10 individual if the rescission is based on information about that
11 individual.

12 (c) If a new individual health benefit plan policy or
13 contract is issued under Subsection (a)(1), the plan issuer may
14 revise the premium rate only to reflect the number of persons
15 covered by the new policy or contract.

16 Sec. 1218.052. PREEXISTING CONDITION EXCLUSION; WAITING OR
17 AFFILIATION PERIOD. (a) An individual health benefit plan issuer
18 required to offer coverage under this chapter may not decline to
19 issue the coverage or impose any preexisting condition exclusion on
20 an individual who retains existing coverage or obtains new coverage
21 under this chapter.

22 (b) Notwithstanding Subsection (a), if an individual was
23 subject to a preexisting condition provision or a waiting or
24 affiliation period under the rescinded health benefit plan policy
25 or contract, the plan issuer may apply the same preexisting
26 condition provision or waiting or affiliation period in a new
27 policy or contract issued under this chapter. The time period in

1 the new policy or contract for the preexisting condition provision
2 period or waiting or affiliation period may not be longer than the
3 applicable period in the rescinded policy or contract. The plan
4 issuer shall credit any time the individual was covered under the
5 rescinded policy or contract to the preexisting condition provision
6 period or waiting or affiliation period in the new policy or
7 contract.

8 Sec. 1218.053. NOTICE. An individual health benefit plan
9 issuer that rescinds an individual health benefit plan policy or
10 contract shall notify in writing each individual covered under the
11 policy or contract of the offer of coverage required to be made
12 under this chapter.

13 Sec. 1218.054. MINIMUM TIME TO ACCEPT OFFER. An individual
14 health benefit plan issuer required to offer continuation of
15 coverage under this chapter must allow an individual entitled to
16 the coverage at least 60 days to accept the offered coverage.

17 Sec. 1218.055. EFFECTIVE DATE OF COVERAGE. A new health
18 benefit plan policy or contract issued under this chapter is
19 effective as of the effective date of the rescinded policy or
20 contract, and there may not be a lapse in coverage.

21 SECTION 2. (a) The change in law made by Chapter 1217,
22 Insurance Code, as added by this Act, applies only to an application
23 for health benefit plan coverage submitted to a health benefit plan
24 issuer on or after January 1, 2010. An application submitted before
25 that date is governed by the law in effect immediately before the
26 effective date of this Act, and that law is continued in effect for
27 that purpose.

1 (b) The change in law made by Chapter 1218, Insurance Code,
2 as added by this Act, applies only to a rescission of an individual
3 health benefit plan policy or contract or health benefit plan
4 coverage on or after the effective date of this Act. A rescission
5 of a policy, contract, or coverage before the effective date of this
6 Act is governed by the law in effect immediately before that date,
7 and that law is continued in effect for that purpose.

8 SECTION 3. This Act takes effect September 1, 2009.