

1-1 By: Duncan S.B. No. 1771
1-2 (In the Senate - Filed March 11, 2009; March 20, 2009, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 6, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 6, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1771 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the availability and continuation of certain health
1-11 benefit plan coverage.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 8, Insurance Code, is amended
1-14 by adding Chapter 1202A to read as follows:

1-15 CHAPTER 1202A. TEMPORARY EXTENSION OF ELECTION PERIOD FOR
1-16 CONTINUATION OF CERTAIN COVERAGE

1-17 Sec. 1202A.001. EXTENSION OF ELECTION PERIOD. (a) For the
1-18 purposes of this section, an "extended election eligible
1-19 individual" means an employee, member, dependent, or enrollee:

1-20 (1) who became eligible for continuation coverage due
1-21 to involuntary termination, other than involuntary termination for
1-22 cause, under Subchapter F, Chapter 1251, or Subchapter G, Chapter
1-23 1271, at any time during the period that begins on September 1,
1-24 2008, and ends on February 16, 2009;

1-25 (2) who did not elect such coverage or whose elected
1-26 continuation coverage lapsed or was canceled without reinstatement
1-27 for a reason other than exhaustion of the maximum period of
1-28 continuation coverage allowable under law; and

1-29 (3) whose involuntary termination on which the
1-30 eligibility is based occurred during that same period.

1-31 (b) Notwithstanding Section 1251.253 or 1271.301, an
1-32 extended election eligible individual may elect continuation
1-33 coverage under this section beginning on the effective date of S.B.
1-34 No. 1771, Acts of the 81st Legislature, Regular Session, 2009, and
1-35 ending on the 60th day after the date on which the notification
1-36 required by Subsection (e) is provided to the individual.

1-37 (c) The period of continuation coverage for an extended
1-38 election eligible individual who elects continuation coverage
1-39 begins with the first period of coverage beginning on or after the
1-40 effective date of S.B. No. 1771, Acts of the 81st Legislature,
1-41 Regular Session, 2009, and does not extend beyond the date the
1-42 period of continuation coverage would have ended if the coverage
1-43 had been elected during the election period required under the law
1-44 as it existed before the effective date of S.B. No. 1771, Acts of
1-45 the 81st Legislature, Regular Session, 2009.

1-46 (d) With respect to an individual who elects continuation
1-47 coverage under Subsection (b), the period beginning on the date the
1-48 individual first became eligible for continuation coverage and
1-49 ending on the first day of the 60-day election period described by
1-50 Subsection (b) shall be disregarded for purposes of determining a
1-51 63-day period referred to in 29 U.S.C. Section 1181(c)(2), 42
1-52 U.S.C. Section 300gg(c)(2), 26 U.S.C. Section 9801(c)(2), and
1-53 Sections 846.202(d), 1501.102, and 1506.001(8).

1-54 (e) Not later than the 60th day after the effective date of
1-55 S.B. No. 1771, Acts of the 81st Legislature, Regular Session, 2009,
1-56 an employer or group policy or contract holder shall provide notice
1-57 to any former employee, member, dependent, or enrollee who is an
1-58 extended election eligible individual that includes:

1-59 (1) a description of the extended election period
1-60 available to the individual under this section;

1-61 (2) a description, displayed in a prominent manner, of
1-62 the individual's right to a reduced premium and any conditions on
1-63 entitlement to the reduced premium under the American Recovery and

2-1 Reinvestment Act of 2009 (Pub. L. No. 111-5);
 2-2 (3) a form that allows the individual to request
 2-3 treatment as an assistance eligible individual, as defined by the
 2-4 American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5),
 2-5 to whom the premium subsidy would apply;
 2-6 (4) the amount continuation coverage will cost and the
 2-7 period of coverage available;
 2-8 (5) an election form that includes the return address
 2-9 and the due date for making the election; and
 2-10 (6) notice that if the individual is entitled to the
 2-11 reduced premium and later becomes eligible for other group health
 2-12 plan coverage or Medicare, the individual must notify the employer
 2-13 in writing or the individual may be subject to a tax penalty.

2-14 Sec. 1202A.002. EXPIRATION OF CHAPTER. This chapter
 2-15 expires September 1, 2013.

2-16 SECTION 2. Section 1251.253, Insurance Code, is amended to
 2-17 read as follows:

2-18 Sec. 1251.253. REQUEST FOR CONTINUATION OF GROUP COVERAGE.
 2-19 An employee, member, or dependent must provide to the employer or
 2-20 group policyholder a written request for ~~in writing the~~
 2-21 continuation of group coverage not later than the 60th ~~31st~~ day
 2-22 after the later of:

- 2-23 (1) the date the group coverage would otherwise
- 2-24 terminate; or
- 2-25 (2) the date the individual is given, in a format
- 2-26 prescribed by the commissioner, notice by either the employer or
- 2-27 the group policyholder of the right to continuation of group
- 2-28 coverage.

2-29 SECTION 3. Section 1251.254, Insurance Code, is amended to
 2-30 read as follows:

2-31 Sec. 1251.254. PAYMENT OF CONTRIBUTIONS. Except as
 2-32 provided by this section, an ~~(a) An~~ employee, member, or
 2-33 dependent who elects to continue group coverage under this
 2-34 subchapter must pay to the employer or group policyholder~~,~~ each
 2-35 month ~~in advance,~~ the amount of contribution required by the
 2-36 employer or policyholder, plus two percent of the group rate for the
 2-37 coverage being continued under the group policy ~~on the due date of~~
 2-38 ~~each payment~~. A payment under this section must be made not later
 2-39 than the 45th day after the date of the initial election for
 2-40 coverage and on the due date of each payment thereafter. Following
 2-41 the first payment made after the initial election for coverage, the
 2-42 payment of any other premium shall be considered timely if made on
 2-43 or before the 30th day after the date on which the payment is due.

2-44 ~~[(b) The employee's, member's, or dependent's written~~
 2-45 ~~election for continuation of group coverage, together with the~~
 2-46 ~~first contribution required to establish advance monthly~~
 2-47 ~~contributions, must be given to the employer or policyholder not~~
 2-48 ~~later than the later of:~~

- 2-49 ~~[(1) the 31st day after the date coverage would~~
- 2-50 ~~otherwise terminate; or~~
- 2-51 ~~[(2) the date the individual is given notice by either~~
- 2-52 ~~the employer or the group policyholder of the right to continuation~~
- 2-53 ~~of group coverage.]~~

2-54 SECTION 4. Section 1251.255, Insurance Code, is amended to
 2-55 read as follows:

2-56 Sec. 1251.255. TERMINATION OF CONTINUED COVERAGE.
 2-57 (a) Group coverage continued under this subchapter may not
 2-58 terminate until the earliest of:

- 2-59 (1) the date the maximum continuation period provided
- 2-60 by law would end, which is:

2-61 (A) for any employee, member, or dependent not
 2-62 eligible for continuation coverage under Title X, Consolidated
 2-63 Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161
 2-64 et seq.) (COBRA), nine ~~six~~ months after the date the employee,
 2-65 member, or dependent elects to continue the group coverage; or

2-66 (B) for any employee, member, or dependent
 2-67 eligible for continuation coverage under COBRA, six additional
 2-68 months following any period of continuation coverage provided under
 2-69 COBRA;

3-1 (2) the date failure to make timely payments would
3-2 terminate the group coverage;
3-3 (3) the date the group coverage terminates in its
3-4 entirety;
3-5 (4) the date the insured is or could be covered under
3-6 Medicare;
3-7 (5) the date the insured is covered for similar
3-8 benefits by another plan or program, including:
3-9 (A) a hospital, surgical, medical, or major
3-10 medical expense insurance policy;
3-11 (B) a hospital or medical service subscriber
3-12 contract; or
3-13 (C) a medical practice or other prepayment plan;
3-14 (6) the date the insured is eligible for similar
3-15 benefits, whether or not covered for those benefits, under any
3-16 arrangement of coverage for individuals in a group, whether on an
3-17 insured or uninsured basis; or
3-18 (7) the date similar benefits are provided or
3-19 available to the insured under any state or federal law other than
3-20 continuation coverage under Title X, Consolidated Omnibus Budget
3-21 Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.)
3-22 (COBRA).
3-23 (b) Not later than the 30th day before the end of the
3-24 continuation period described by Subsection (a)(1) that is
3-25 applicable to the individual ~~[six months after the date the~~
3-26 ~~employee, member, or dependent elects to continue group coverage~~
3-27 ~~under the policy]~~, the insurer shall:
3-28 (1) notify the individual that the individual may be
3-29 eligible for coverage under the Texas Health Insurance Risk Pool as
3-30 provided by Chapter 1506; and
3-31 (2) provide to the individual the address for applying
3-32 to that pool.
3-33 SECTION 5. Section 1271.302, Insurance Code, is amended to
3-34 read as follows:
3-35 Sec. 1271.302. REQUEST FOR CONTINUED COVERAGE; DEADLINE.
3-36 An enrollee must provide to the employer or group contract holder
3-37 ~~[make]~~ a written notice of election to continue group coverage
3-38 under this subchapter ~~[and pay the first contribution required to~~
3-39 ~~establish contributions on an advance monthly basis to the employer~~
3-40 ~~or group contract holder]~~ not later than the 60th ~~[31st]~~ day after
3-41 the later of:
3-42 (1) the date the group coverage would otherwise
3-43 terminate; or
3-44 (2) the date the enrollee is given notice of the right
3-45 of continuation by the employer or group contract holder.
3-46 SECTION 6. Subsection (b), Section 1271.303, Insurance
3-47 Code, is amended to read as follows:
3-48 (b) The enrollee must make the payment not later than the
3-49 45th day after the initial election for coverage and on the due date
3-50 of each payment thereafter. Following the first payment made after
3-51 the initial election for coverage, the payment of any other premium
3-52 shall be considered timely if made by the 30th day after the date on
3-53 which payment is due ~~[in advance on a monthly basis on the due date~~
3-54 ~~of each payment]~~.
3-55 SECTION 7. Section 1271.304, Insurance Code, is amended to
3-56 read as follows:
3-57 Sec. 1271.304. TERMINATION OF CONTINUED COVERAGE. Group
3-58 continued coverage under this subchapter may not terminate until
3-59 the earliest of:
3-60 (1) the date the maximum continuation period provided
3-61 by law would end, which is:
3-62 (A) for any enrollee not eligible for
3-63 continuation coverage under Title X, Consolidated Omnibus Budget
3-64 Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.)
3-65 (COBRA), the end of the nine-month ~~[six-month]~~ period after the
3-66 date the election to continue coverage is made; or
3-67 (B) for any enrollee eligible for continuation
3-68 coverage under COBRA, six additional months following any period of
3-69 continuation provided under that statute;

4-1 (2) the date on which failure to make timely payments
4-2 terminates coverage;

4-3 (3) the date on which the enrollee is covered for
4-4 similar services and benefits by any other plan or program,
4-5 including a hospital, surgical, medical, or major medical expense
4-6 insurance policy, hospital or medical service subscriber contract,
4-7 or medical practice or other prepayment plan; or

4-8 (4) the date on which the group coverage terminates in
4-9 its entirety.

4-10 SECTION 8. Subsection (a), Section 1271.305, Insurance
4-11 Code, is amended to read as follows:

4-12 (a) At least 30 days before the end of the continuation
4-13 [six-month] period described by Section 1271.304(1) that is
4-14 applicable to the enrollee [after the date an enrollee elects to
4-15 continue group coverage], the health maintenance organization
4-16 shall notify the enrollee that the enrollee may be eligible for
4-17 coverage under the Texas Health Insurance Risk Pool as provided by
4-18 Chapter 1506.

4-19 SECTION 9. Section 1506.153, Insurance Code, is amended by
4-20 adding Subsections (c) and (d) to read as follows:

4-21 (c) An individual eligible for benefits from the
4-22 continuation of coverage under Subchapter F or G, Chapter 1251, or
4-23 Subchapter G, Chapter 1271, who did not elect continuation coverage
4-24 during the election period, or whose elected continuation coverage
4-25 lapsed or was canceled without reinstatement, is eligible for pool
4-26 coverage. Eligibility under this subsection is subject to a
4-27 180-day exclusion of coverage under Section 1506.155(a-1).

4-28 (d) The 180-day exclusion of coverage provided under
4-29 Subsection (c) does not apply to an individual eligible for
4-30 benefits from the continuation of coverage under Subchapter F or G,
4-31 Chapter 1251, or Subchapter G, Chapter 1271, who did not elect
4-32 continuation coverage during the election period, or whose elected
4-33 continuation coverage lapsed or was canceled without
4-34 reinstatement, following a period of continuation coverage under
4-35 Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29
4-36 U.S.C. Section 1161 et seq.) (COBRA).

4-37 SECTION 10. Subsection (a-1), Section 1506.155, Insurance
4-38 Code, is amended to read as follows:

4-39 (a-1) Except as provided by Section 1506.056, pool coverage
4-40 for an individual eligible pursuant to Section 1506.153(b) or (c)
4-41 excludes charges or expenses incurred before the expiration of 180
4-42 days from the effective date of coverage with regard to any
4-43 condition for which:

4-44 (1) the existence of symptoms would cause an
4-45 ordinarily prudent person to seek diagnosis, care, or treatment
4-46 within the six-month period preceding the effective date of
4-47 coverage; or

4-48 (2) medical advice, care, or treatment was recommended
4-49 or received during the six-month period preceding the effective
4-50 date of coverage.

4-51 SECTION 11. (a) Sections 1251.253 and 1271.302, Insurance
4-52 Code, as amended by this Act, apply only to:

4-53 (1) a request for continuation of group coverage that
4-54 an employee, member, dependent, or enrollee becomes eligible to
4-55 make on or after the effective date of this Act; or

4-56 (2) a request for continuation of group coverage that
4-57 an employee, member, dependent, or enrollee became eligible to make
4-58 before the effective date of this Act, provided that the election
4-59 period available to the employee, member, dependent, or enrollee
4-60 under Section 1251.253 or 1271.302, Insurance Code, as those
4-61 sections existed before amendment by this Act, has not expired as of
4-62 the effective date of this Act.

4-63 (b) A request for continuation of group coverage that an
4-64 employee, member, dependent, or enrollee became eligible to make
4-65 before the effective date of this Act and that, on the effective
4-66 date of this Act, the employee, member, dependent, or enrollee is no
4-67 longer eligible to make, is governed by the law as it existed before
4-68 the effective date of this Act, and that law is continued in effect
4-69 for that purpose. This subsection does not apply to an employee,

5-1 member, dependent, or enrollee who is an extended election eligible
5-2 individual to whom Chapter 1202A, Insurance Code, as added by this
5-3 Act, applies.

5-4 SECTION 12. Sections 1251.254 and 1271.303, Insurance Code,
5-5 as amended by this Act, apply only to a payment for continuation
5-6 coverage required to be made on or after the effective date of this
5-7 Act. A payment for continuation coverage required to be made before
5-8 the effective date of this Act is governed by the law as it existed
5-9 before that date, and that law is continued in effect for that
5-10 purpose.

5-11 SECTION 13. Sections 1251.255 and 1271.304, Insurance Code,
5-12 as amended by this Act, apply to coverage for which an election to
5-13 continue was made on or after the effective date of this Act.

5-14 SECTION 14. This Act takes effect immediately if it
5-15 receives a vote of two-thirds of all the members elected to each
5-16 house, as provided by Section 39, Article III, Texas Constitution.
5-17 If this Act does not receive the vote necessary for immediate
5-18 effect, this Act takes effect September 1, 2009.

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