

## **BILL ANALYSIS**

S.B. 859  
By: Duncan  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Legislature previously enacted bills allowing employers to form cooperatives for the purchase of employer health benefit plans in Texas. All three types of cooperatives are private purchasing cooperatives. Several issues have arisen since private purchasing health care cooperatives were initially formed.

S.B. 859 creates provisions for allowing a sole proprietor to join a health care cooperative if the cooperative elects to allow sole proprietors to join. The bill requires all health care plans offered to the cooperative to be made available to all employers in the cooperative and authorizes cooperatives to elect to rate each employer group separately within the health group cooperative.

As proposed, S.B. 859 amends current law relating to small and large employer health group cooperatives.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 1501.0581, Insurance Code) and SECTION 6 (Section 1501.067, Insurance Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 1501.051, Insurance Code, by amending Subdivision (3-a) and adding Subdivision (3-b), as follows:

(3-a) Defines "eligible single-employee business."

(3-b) Creates this subdivision from existing text.

SECTION 2. Amends Section 1501.058(a), Insurance Code, as follows:

(a) Requires a cooperative to carry out certain functions including to arrange for small or large employer health benefit plan coverage for small employer groups, large employer groups, and, subject to Section 1501.0581, eligible single-employee businesses that participate in the cooperative by contracting with small or large employer health benefit plan issuers that meet the requirements established by Section 1501.061 (Requirements Applicable to Health Benefit Plan Issuers With Which Cooperative May Contract). Makes a nonsubstantive change.

SECTION 3. Amends Section 1501.0581, Insurance Code, by amending Subsections (a), (b), (k), and (p) and adding Subsections (q)-(x), as follows:

(a) Authorizes the membership of a health group cooperative to consist of only small employers; only large employers; both small and large employers; small employers and eligible single-employee businesses; large employers and eligible single-employee businesses; or small employers, large employers, and eligible single-employee businesses. Requires an employer, to participate as a member of a health group

cooperative, to be a small or large employer as described by this chapter or an eligible single-employee business. Makes nonsubstantive changes.

(b) Provides that subject to the requirements imposed on small employer health benefit plan issuers under Section 1501.101 (Geographic Service Areas) and subject to Subsections (a-1) (relating to restricting membership in a health group cooperative to small and large employers within a single industry grouping) and (o) (relating to a health group cooperative made up of only small employers not being required allow a small employer from joining the health group cooperative under certain conditions), a health group cooperative:

(1) is required to allow a small employer to join a health group cooperative, other than a health group cooperative consisting of only large employers, rather than only small employers or both small and large employers, and enroll in health benefit plan coverage;

(2) is authorized, subject to Subsection (t), to allow eligible single-employee businesses to join a health group cooperative and enroll in health benefit plan coverage; and

(3) is authorized to allow a large employer to join the health group cooperative and enroll in health benefit plan coverage. Makes nonsubstantive changes.

(k) Authorizes a health group cooperative to offer more than one health benefit plan, but each plan offered is required to be made available to all employers participating in, rather than all employees covered by, the cooperative.

(p) Requires a health group cooperative to make the election described by Subsection (o) at the time the cooperative is initially formed. Prohibits a health group cooperative making this election from including an eligible single-employee business. Requires that evidence of the election be filed in writing with the commissioner of insurance (commissioner) in the form and at the time prescribed by the commissioner by rule.

(q) Authorizes a health group cooperative, except as provided by Subsection (r), to file an election with the commissioner, on a form and in the manner prescribed by the commissioner, to permit eligible single-employee businesses to join the cooperative and to enroll in health benefit plan coverage. Requires that the election be filed not later than the 90th day before the date coverage for eligible single-employee businesses is to become effective.

(r) Authorizes a health group cooperative to file an election under Subsection (q) only if a small or large employer health benefit plan issuer has agreed in writing to offer to issue coverage to the cooperative based on its membership after the election to permit eligible single-employee businesses to participate in the cooperative has become effective.

(s) Provides that on the date an election under Subsection (q) becomes effective and until the election is rescinded, the provisions of this subchapter relating to guaranteed issuance of plans, to rating requirements, and to mandated benefits that are applicable to small employers apply to eligible single-employee businesses that are members of the health group cooperative.

(t) Requires a health group cooperative that files an election with the commissioner to permit an eligible single-employee business to join the health group cooperative and enroll in health benefit plan coverage to permit participation and enrollment in the cooperative's health benefit plan coverage during the initial enrollment and annual open enrollment periods by each eligible single-employee business that elects to participate and agrees to satisfy requirements associated with participation in and coverage through the cooperative. Provides that for purposes of this subsection, the provisions of Subsection (a-1) applicable to small employers apply to eligible single-employee businesses.

(u) Authorizes a health group cooperative to rescind its election to permit eligible single-employee businesses to join the cooperative and enroll in health benefit plan coverage only if the election has been effective for at least two years, except as provided by Subsection (v); the health group cooperative files notice of the rescission with the commissioner not later than the 180th day before the effective date of the rescission, and the health group cooperative provides written notice of termination of coverage to all eligible single-employee business members of the cooperative not later than the 180th day before the effective date of termination.

(v) Requires the commissioner to adopt rules under which a health group cooperative may for good cause rescind an election described by Subsection (u) before the second anniversary of the effective date of the election.

(w) Authorizes a health group cooperative that files notice of rescission, notwithstanding Subsection (u), to choose to permit existing eligible single-employee businesses to remain active, covered members of the cooperative, but only if all such members of the cooperative are provided the same opportunity.

(x) Prohibits a health group cooperative that has rescinded an election under Subsection (u) from filing a subsequent election to permit eligible single-employee businesses to join the cooperative and enroll in health benefit plan coverage before the fifth anniversary of the effective date of the rescission.

SECTION 4. Amends Section 1501.063(b-3), Insurance Code, to require a health group cooperative, except as provided by Section 1501.581(k), to have sole authority to make benefit elections and perform other administrative functions under this code for the cooperative's participating employers.

SECTION 5. Amends Section 1501.065, Insurance Code, as follows:

Sec. 1501.065. **CERTAIN ACTIONS BASED ON RISK CHARACTERISTICS OR HEALTH STATUS PROHIBITED.** Prohibits a cooperative from limiting, restricting, or conditioning an employer's or employee's membership in a cooperative, or an employee's choice among benefit plans based on risk characteristics of a group or of any member of a group, or health status related factors, duration of coverage, or any similar characteristic related to the health status or experience of a group or of any member of a group.

SECTION 6. Amends Subchapter B, Chapter 1501, Insurance Code, by adding Sections 1501.066 and 1501.067, as follows:

Sec. 1501.066. **ELECTION TO TREAT PARTICIPATING EMPLOYERS SEPARATELY FOR RATING PURPOSES.** (a) Authorizes a health group cooperative, notwithstanding Section 1501.063, to file with the commissioner, on a form and in the manner prescribed by the commissioner, an election to treat each participating employer within the cooperative as a separate employer for purposes of rating small and large employer health benefit plans, subject to the rating requirements of this code applicable to such plans. Requires an existing health group cooperative to file the election with the Texas Department of Insurance (TDI) not later than the 90th day before the date on which the election is to become effective.

(b) Requires a health group cooperative to provide to all participating and prospective employers, in a manner prescribed by the commissioner, a written notice of the cooperative's election to treat participating employers within the cooperative as separate employers for purposes of rating small and large employer health benefit plans. Requires employers participating in the cooperative when such an election is made to be provided notice of the election not later than the 90th day before the date the election is to become effective. Requires that for a participating employer, the notice contain the quote for the premium rate applicable to the employer as of the date the plan is renewed. Requires prospective employers to be provided notice of the election when the prospective employer applies to become a participating employer in the health group cooperative.

(c) Provides that an election under this section is effective on the earliest date after the election is made on which the plan to which the election applies is initially issued or renewed. Provides that the election remains in effective for not less than 12 months after the effective date.

Sec. 1501.067. ELIGIBLE SINGLE-EMPLOYEE BUSINESS. Requires the commissioner to adopt rules governing the eligibility of a single-employee business to participate in a health group cooperative under this subchapter. Requires that the rules include provisions to ensure that each eligible single-employee business has a business purpose and was not found solely to obtain health benefit plan coverage under this subchapter.

SECTION 7. Effective date: upon passage or September 1, 2011.

**EFFECTIVE DATE**

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