

By: Shelton

H.B. No. 3277

A BILL TO BE ENTITLED

AN ACT

relating to creation of portable insurance plans.

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

SECTION 1. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1509 to read as follows:

CHAPTER 1509. PORTABLE INSURANCE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1509.001. DEFINITIONS. In this chapter:

(1) "Portable insurance plan" means a health benefit plan offered under this chapter that provides coverage for benefits selected by an enrollee.

(2) "Enrollee" means an individual who has been determined to be eligible for and is receiving plan coverage under this chapter.

(3) "Plan coverage" means health care services that are covered as benefits under a portable insurance plan.

(4) "Plan entity" means a health insurer or health maintenance organization that offers a portable insurance plan.

(5) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, including:

1 (A) compressed digital interactive video, audio,
2 or data transmission;

3 (B) clinical data transmission using computer
4 imaging by way of still-image capture and store and forward; and

5 (C) other technology that facilitates access to
6 health care services or medical specialty expertise.

7 (6) "Telemedicine medical service" means a health care
8 service provided by a health professional acting under physician
9 delegation and supervision, for purposes of patient assessment by
10 the health professional, diagnosis or consultation by a physician,
11 treatment, or the transfer of medical data, that requires the use of
12 advanced telecommunications technology, including:

13 (A) compressed digital interactive video, audio,
14 or data transmission;

15 (B) clinical data transmission using computer
16 imaging by way of still-image capture and store and forward; and

17 (C) other technology that facilitates access to
18 health care services or medical specialty expertise.

19 Sec. 1509.002. PARTICIPATION IN EXCHANGE; QUALIFIED HEALTH
20 PLAN; WAIVER. (a) If an exchange is established in this state as
21 the American Health Benefit Exchange required by Section 1311,
22 Patient Protection and Affordable Care Act (Pub. L. No. 111-148), a
23 portable insurance plan shall be deemed a qualified health plan for
24 purposes of the exchange.

25 (b) If the commissioner determines that a waiver of federal
26 law or other federal authorization is required so that a portable
27 insurance plan may be treated as a qualified health plan under

1 Subsection (a), the commissioner shall request the waiver or
2 authorization and may delay implementing Subsection (a) until the
3 waiver or authorization is granted.

4 (c) If the commissioner determines that a waiver of federal
5 law or other federal authorization would facilitate implementation
6 of this chapter, the commissioner may request the waiver or
7 authorization.

8 Sec. 1509.003. RULES. The commissioner may adopt rules as
9 necessary to implement this chapter.

10 [Sections 1509.004-1509.050 reserved for expansion]

11 SUBCHAPTER B. PARTICIPATION; COVERAGE AND BENEFITS

12 Sec. 1509.051. PLAN ENTITIES. (a) Subject to Subsection
13 (b), any plan entity may issue plan coverage under this chapter.

14 (b) The commissioner by rule may limit which plan entity may
15 issue a plan under this chapter if the commissioner determines that
16 the limitation is necessary to ensure that:

17 (1) plan coverage is available and affordable for
18 residents of this state; and

19 (2) plan entities are financially sound.

20 (c) If the commissioner limits participation under
21 Subsection (b), the commissioner shall contract on a competitive
22 procurement basis with one or more plan entities to provide plan
23 coverage under this chapter.

24 Sec. 1509.052. EXCLUSION OR LIMITATION OF COVERAGE FOR
25 PREEXISTING DISEASE OR CONDITION. (a) A portable insurance plan
26 may exclude or limit coverage for a preexisting disease or
27 condition for not more than the 180 days immediately after the

1 effective date of coverage.

2 (b) A plan entity that excludes or limits coverage for a
3 preexisting disease or condition as described by Subsection (a)
4 shall issue to the applicant a notice of uninsured preexisting
5 condition that:

6 (1) certifies that the plan entity refused to issue
7 coverage to the applicant for health reasons; and

8 (2) states each disease or condition the plan entity
9 refused to cover.

10 (c) An applicant who receives a notice of uninsured
11 preexisting condition under Subsection (b) may apply for coverage
12 under Section 1506.161.

13 Sec. 1509.053. EXCEPTION FROM MANDATED BENEFIT
14 REQUIREMENTS. A portable insurance plan is not subject to a law
15 that requires coverage or the offer of coverage of a health care
16 service or benefit.

17 Sec. 1509.054. CERTAIN COVERAGE AUTHORIZED. (a) A
18 portable insurance plan may provide coverage for services and
19 benefits such as:

20 (1) preventive health services, which may include
21 immunizations, annual health assessments, well-woman and well-care
22 services, mammograms, cervical cancer screenings, and noninvasive
23 colorectal or prostate screenings;

24 (2) incentives for routine preventive care;

25 (3) office visits for the diagnosis and treatment of
26 illness or injury;

27 (4) office surgery, including anesthesia;

- 1 (5) behavioral health services;
- 2 (6) durable medical equipment and prosthetics;
- 3 (7) diabetic supplies;
- 4 (8) inpatient hospital stays;
- 5 (9) hospital emergency care services;
- 6 (10) urgent care services; and
- 7 (11) outpatient facility services, outpatient
- 8 surgery, and outpatient diagnostic services.

9 (b) A portable insurance plan may offer prescription drug
10 coverage that complies with Chapter 1369.

11 (c) The commissioner may, with respect to the categories of
12 services and benefits described by this section:

13 (1) suggest coverage that may be offered under this
14 chapter;

15 (2) advise the plan entity regarding methods and
16 procedures of claims administration;

17 (3) facilitate the resolution of coverage disputes
18 arising from a portable insurance plan;

19 (4) study, on an ongoing basis, the operation of all
20 coverages provided under this chapter, including gross and net
21 costs, administration costs, benefits, utilization of benefits,
22 and claims administration;

23 (5) design, implement, and monitor portable insurance
24 plan features intended to discourage excessive utilization,
25 promote efficiency, and contain costs for plans;

26 (6) develop and refine, on an ongoing basis, a health
27 benefit strategy under this chapter that is consistent with

1 evolving benefits delivery systems;

2 (7) develop a program to encourage employer
3 contributions to ensure that plan coverage is available and
4 affordable for residents of this state; and

5 (8) modify the copayment and deductible amounts for
6 prescription drug benefits under a portable insurance plan, if the
7 commissioner determines that the modification is necessary to
8 ensure that plan coverage is available and affordable for residents
9 of this state.

10 Sec. 1509.055. LIMITED GUARANTEED ISSUE; MINIMUM TERM. (a)
11 A plan entity shall issue plan coverage to an individual who:

12 (1) applies for plan coverage;

13 (2) agrees to satisfy the requirements of the portable
14 insurance plan selected by the applicant; and

15 (3) has been a member of a federal or state high risk
16 health pool for at least six months immediately before the date of
17 the application for coverage under this chapter.

18 (b) A plan must provide coverage under this chapter for a
19 term of not less than three years.

20 Sec. 1509.056. TELEHEALTH AND TELEMEDICINE MEDICAL
21 COVERAGE REQUIRED. (a) A portable insurance plan must cover
22 telemedicine medical services or telehealth services under the plan
23 in accordance with Chapter 1455.

24 (b) To promote efficiencies in the delivery of health care
25 services, telehealth service and telemedicine medical service,
26 including consultation between a health care provider and an
27 enrollee by phone or e-mail or other electronic media, must be

1 promoted and covered under a portable insurance plan.

2 Sec. 1509.057. PORTABILITY; NONDISCRIMINATORY
3 CONTRIBUTION. (a) A portable insurance plan is individual health
4 coverage, not sponsored by any employer or group and not dependent
5 on an enrollee's employment status or membership in a group.

6 (b) Notwithstanding Subsection (a), an employer or group
7 may contribute to the payment of premiums for a portable insurance
8 plan through wage adjustment, reimbursement, or otherwise.

9 (c) An employer or group making a contribution under
10 Subsection (b) may not classify, differentiate, or discriminate
11 against payment of premium based on the coverage selected by the
12 enrollee.

13 Sec. 1509.058. COST CONTAINMENT. A plan entity must
14 discourage excessive utilization, promote efficiency, and contain
15 costs of a portable insurance plan.

16 [Sections 1509.059-1509.100 reserved for expansion]

17 SUBCHAPTER C. PORTABLE INSURANCE PLAN ADMINISTRATION

18 Sec. 1509.101. APPLICATION PROCESS. A plan entity shall
19 accept applications for plan coverage at all times throughout the
20 calendar year.

21 Sec. 1509.102. ENROLLMENT MATERIALS. Plan enrollment
22 materials must include:

23 (1) information in plain language about benefits
24 provided under plan coverage, benefit limits, cost-sharing
25 provisions, and exclusions;

26 (2) a clear representation of what is not covered by a
27 benefit offered; and

1 (3) a standard disclosure form adopted by the
2 commissioner by rule that an applicant for plan coverage must read
3 and execute.

4 Sec. 1509.103. GUIDELINES. The commissioner shall adopt by
5 rule guidelines to:

6 (1) ensure that portable insurance plans meet
7 standards for quality of care and access to care that are consistent
8 with prevailing professionally recognized standards of practice;
9 and

10 (2) encourage implementation of this chapter in a
11 manner that provides federal tax benefits to enrollees, plan
12 entities, and employers or groups described by Section 1509.057.

13 Sec. 1509.104. REGULATORY OVERSIGHT. A change in a
14 portable insurance plan benefit, premium, or policy form is subject
15 to regulatory oversight by the department as provided by rule
16 adopted by the commissioner.

17 Sec. 1509.105. PUBLIC AWARENESS. (a) The department shall
18 develop a public awareness program to be implemented throughout the
19 state to promote portable insurance plans.

20 (b) A public or private entity may implement a program to
21 encourage enrollment in the portable insurance plans, to encourage
22 employers and groups to contribute to the payment of portable
23 insurance plan premiums for enrollees, and to advise individuals,
24 employers, and other entities about the anticipated tax
25 consequences of a contribution to the payment of an enrollee's
26 premiums.

27 Sec. 1509.106. REPORTS. A plan entity shall submit reports

1 to the department in the form and at the time the commissioner
2 prescribes.

3 [Sections 1509.107-1509.150 reserved for expansion]

4 SUBCHAPTER D. REGULATION OF PORTABLE INSURANCE PLANS

5 Sec. 1509.151. RATING; PREMIUM PRACTICES IN GENERAL. (a) A
6 plan entity must use rating practices for portable insurance plans
7 that are consistent with the purposes of this chapter.

8 (b) A plan entity shall apply rating factors consistently
9 with respect to all enrollees.

10 (c) A difference in premium rates charged by a plan entity
11 for portable insurance plans must be reasonable and reflect an
12 objective difference in plan design.

13 Sec. 1509.152. PREMIUM RATE DEVELOPMENT AND CALCULATION.

14 (a) Rating factors used to underwrite portable insurance plans
15 must produce premium rates that:

16 (1) differ only by the amounts attributable to plan
17 design; and

18 (2) do not reflect differences because of the nature
19 of the individuals assumed to select a particular portable
20 insurance plan.

21 (b) Each portable insurance plan that is issued or renewed
22 by a plan entity in a calendar month must be issued subject to the
23 same premium rates.

24 (c) The commissioner by rule may establish additional
25 rating criteria and requirements for portable insurance plans if
26 the commissioner determines that the criteria and requirements are
27 necessary to ensure that plan coverage is available and affordable

1 for residents of this state and plan entities are financially
2 sound.

3 Sec. 1509.153. PLAN DISAPPROVAL. (a) The department shall
4 disapprove a portable insurance plan that:

5 (1) contains an ambiguous, inconsistent, or
6 misleading provision or an exception or condition that deceptively
7 affects or limits the benefits purported to be assumed in the
8 general coverage provided by the plan; or

9 (2) provides benefits that are unreasonable in
10 relation to the premium charged or contains provisions that are
11 unfair or inequitable, that are contrary to the public policy of
12 this state, that encourage misrepresentation, or that result in
13 unfair discrimination in sales practices.

14 (b) The department shall disapprove a portable insurance
15 plan if the plan entity:

16 (1) cannot demonstrate that the plan is financially
17 sound; or

18 (2) is not in compliance with the standards required
19 under this code.

20 Sec. 1509.154. GUARANTY ASSOCIATION. Portable insurance
21 plans are not covered by the Texas Life, Accident, Health and
22 Hospital Service Insurance Guaranty Association.

23 Sec. 1509.155. RECORDS. Each portable insurance plan must
24 maintain enrollment data and reasonable records to enable the
25 department to monitor the plan and determine the financial
26 viability of the plan.

27 Sec. 1509.156. PROGRAM EVALUATION. The department shall

1 issue a biennial report to the legislature that:

2 (1) evaluates portable insurance plans and their
3 effect on plan entities, the number of enrollees, and the scope of
4 the health care coverage offered under a portable insurance plan;

5 (2) provides an assessment of portable insurance plans
6 and their potential applicability in other settings; and

7 (3) uses portable insurance plans to gather
8 information to evaluate low-income, consumer-driven benefit
9 packages.

10 SECTION 2. Section 1506.151(a), Insurance Code, is amended
11 to read as follows:

12 (a) Except as provided by Section 1506.161, the [The] pool
13 shall offer coverage consistent with major medical expense coverage
14 to each eligible individual.

15 SECTION 3. Sections 1506.152(a) and (c), Insurance Code,
16 are amended to read as follows:

17 (a) An individual who is a legally domiciled resident of
18 this state is eligible for coverage from the pool if the individual:

19 (1) provides to the pool evidence that the individual
20 is a federally defined eligible individual who has not experienced
21 a significant break in coverage;

22 (2) is younger than 65 years of age and provides to the
23 pool evidence that the individual maintained health benefit plan
24 coverage under another state's qualified Health Insurance
25 Portability and Accountability Act health program that was
26 terminated because the individual did not reside in that state and
27 submits an application for pool coverage not later than the 63rd day

1 after the date the coverage described by this subdivision was
2 terminated;

3 (3) is younger than 65 years of age and has been a
4 legally domiciled resident of this state for the preceding 30 days,
5 is a citizen of the United States or has been a permanent resident
6 of the United States for at least three continuous years, and
7 provides to the pool:

8 (A) a notice of rejection of, or refusal to
9 issue, substantially similar individual health benefit plan
10 coverage from a health benefit plan issuer, other than an insurer
11 that offers only stop-loss, excess loss, or reinsurance coverage,
12 if the rejection or refusal was for health reasons;

13 (B) certification from an agent or salaried
14 representative of a health benefit plan issuer that states that the
15 agent or salaried representative cannot obtain substantially
16 similar individual coverage for the individual from any health
17 benefit plan issuer that the agent or salaried representative
18 represents because, under the underwriting guidelines of the health
19 benefit plan issuer, the individual will be denied coverage as a
20 result of a medical condition of the individual;

21 (C) an offer to issue substantially similar
22 individual coverage only with conditional riders;

23 (D) a diagnosis of the individual with one of the
24 medical or health conditions on the list adopted under Section
25 1506.154; or

26 (E) evidence that the individual is covered by
27 substantially similar individual coverage that excludes one or more

1 conditions by rider; [~~or~~]

2 (4) provides to the pool evidence that, on the date of
3 application to the pool, the individual is certified as eligible
4 for trade adjustment assistance or for pension benefit guaranty
5 corporation assistance, as provided by the Trade Adjustment
6 Assistance Reform Act of 2002 (Pub. L. No. 107-210); or

7 (5) applies for coverage under Section 1506.161 and
8 provides to the pool a notice of uninsured preexisting condition
9 issued by a portable insurance plan entity under Chapter 1509.

10 (c) Subject to Subsection (f), if an individual who obtains
11 coverage from the pool under Subsection (a), other than coverage
12 under Subsection (a)(5), is a child, each parent, grandparent,
13 brother, sister, or child of that individual who resides with that
14 individual is also eligible for coverage from the pool.

15 SECTION 4. Section 1506.153, Insurance Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Nothing in this section shall be construed to prevent an
18 enrollee under Chapter 1509 from obtaining coverage under Section
19 1506.161.

20 SECTION 5. Section 1506.155, Insurance Code, is amended by
21 adding Subsection (e) to read as follows:

22 (e) Nothing in this section shall be construed to prevent an
23 enrollee under Chapter 1509 from obtaining coverage under Section
24 1506.161.

25 SECTION 6. Section 1506.156, Insurance Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) Nothing in this section allows the pool to reduce

1 benefits paid under Section 1506.161 by an amount paid or payable
2 through a portable insurance plan under Chapter 1509.

3 SECTION 7. Subchapter D, Chapter 1506, Insurance Code, is
4 amended by adding Section 1506.161 to read as follows:

5 Sec. 1506.161. PREEXISTING CONDITION COVERAGE FOR PORTABLE
6 INSURANCE PLAN ENROLLEES. (a) An individual who is an enrollee of
7 a portable insurance plan under Chapter 1509 is entitled to
8 coverage from the pool under this section if the individual
9 provides to the pool a notice of uninsured preexisting condition
10 issued under Section 1509.052.

11 (b) The pool shall and may only cover each uninsured
12 preexisting condition for which an individual provides a notice
13 issued under Section 1509.052.

14 (c) Coverage under this section must be consistent with
15 major medical expense coverage.

16 (d) An individual's coverage under this section expires on
17 the date the exclusion or limitation period described by Section
18 1509.052 and applicable to the individual's coverage under Chapter
19 1509 expires.

20 SECTION 8. Section 1506.301, Insurance Code, is amended to
21 read as follows:

22 Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY.

23 (a) The pool:

24 (1) is subrogated to the rights of an individual
25 covered by the pool to recover against a third party costs for an
26 injury or illness for which the third party is liable under
27 contract, tort law, or other law that have been paid by the pool on

1 behalf of the covered individual; and

2 (2) may enforce that liability on behalf of the
3 individual.

4 (b) Notwithstanding Subsection (a), the pool has no
5 subrogation rights against a portable insurance plan entity arising
6 out of a payment that the pool makes under Section 1506.161.

7 SECTION 9. Section 1369.002, Insurance Code, is amended to
8 read as follows:

9 Sec. 1369.002. APPLICABILITY OF SUBCHAPTER. This
10 subchapter applies only to a health benefit plan that provides
11 benefits for medical or surgical expenses incurred as a result of a
12 health condition, accident, or sickness, including an individual,
13 group, blanket, or franchise insurance policy or insurance
14 agreement, a group hospital service contract, or an individual or
15 group evidence of coverage or similar coverage document that is
16 offered by:

17 (1) an insurance company;

18 (2) a group hospital service corporation operating
19 under Chapter 842;

20 (3) a fraternal benefit society operating under
21 Chapter 885;

22 (4) a stipulated premium company operating under
23 Chapter 884;

24 (5) a reciprocal exchange operating under Chapter 942;

25 (6) a health maintenance organization operating under
26 Chapter 843;

27 (7) a multiple employer welfare arrangement that holds

1 a certificate of authority under Chapter 846; [~~or~~]

2 (8) an approved nonprofit health corporation that
3 holds a certificate of authority under Chapter 844; or

4 (9) a portable insurance plan entity under Chapter
5 1509.

6 SECTION 10. The commissioner of insurance shall adopt any
7 rules necessary to implement the change in law made by Chapter 1509,
8 Insurance Code, as added by this Act, not later than January 1,
9 2012.

10 SECTION 11. The commissioner of insurance shall make an
11 initial determination concerning limitation of plan entity
12 participation under Chapter 1509, Insurance Code, as added by this
13 Act, not later than January 15, 2012. If the commissioner
14 determines that limited participation is necessary, the
15 commissioner shall issue a request for proposal from health
16 insurers and health maintenance organizations to participate under
17 Chapter 1509, Insurance Code, as added by this Act, not later than
18 May 1, 2012.

19 SECTION 12. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2011.