

BILL ANALYSIS

Senate Research Center
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S.B. 1779
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

All health insurers and health maintenance organizations (HMOs) that provide U.S. health care coverage are subject to the health insurance providers fee under Section 9010 of the federal Patient Protection and Affordable Care Act, Pub. L. 111-148 (124 Stat. 119, (2010)), as amended. The provider fee first became due in 2014. The aggregate amount of the fee due from all insurance providers in 2014 was \$8 billion, and it was increased to \$11.3 billion in 2015 and 2016. The total due in 2018 will be increased to \$14.3 billion, and it will be indexed to premium growth thereafter. Due to a one-year congressional moratorium, there is no fee due in 2017. Each provider must annually report its net premiums written for health insurance during the previous year to the IRS by April 15. The IRS uses the reported information to determine and assess the portion of the fee owed by each provider. The fee must be paid by September 30. Interested parties suggest that this annual fee is in effect a federal premium tax, although it differs from a state premium tax, as the tax rate is unknown to providers until after the year in which premiums are written. Interested parties also suggest that, as with all administrative costs, the provider fee is passed on to policyholders through premiums.

Health insurers and HMOs are subject to Texas premium and maintenance taxes based on their net written premiums in Texas. When the provider fee is passed on to policyholders, it causes an increase in the total amount of premiums that Texas then subjects to state tax. Interested parties contend that this is essentially a tax on a tax, and that the inflated tax base results in an increased state tax liability for providers. Consequently, providers need to increase premiums even further to cover the additional cost of this resultant tax liability. These additional premiums likewise get rolled into the total amount subject to tax, inflating the Texas tax base even further. Interested parties suggest that the negative effects of tax pyramiding will continue to compound and continue to drive up the cost of health insurance in Texas.

This issue also impacts premiums paid by the state for insurance under Medicaid and Children's Health Insurance Program (CHIP), as premiums for both programs are subject to premium and maintenance taxes. For example, the 84th Legislature, Regular Session, 2015, had to appropriate almost \$200 million in additional funding for FY 2015 for the purpose of adjusting capitation payments made to managed care organizations to account for the federal provider fee and the associated effects on the providers' federal income taxes.

S.B. 1779 amends Chapters 222 and 257, Insurance Code, to provide a credit against premium and maintenance taxes to offset the tax liability attributable to the recoupment of the provider fee, and thereby preclude the need for a further increase in premiums to cover the cost of that tax liability.

As proposed, S.B. 1779 amends current law relating to premium and maintenance tax credits related to certain fees paid under the Patient Protection and Affordable Care Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 1 (Section 222.0071, Insurance Code) and SECTION 2 (Section 257.005, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Texas comptroller of public accounts and the commissioner in SECTION 4 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 222, Insurance Code, by adding Section 222.0071, as follows:

Sec. 222.0071. CREDIT FOR CERTAIN FEDERAL FEES PAID. (a) Defines “Affordable Care Act” and “recoupment amount.”

(b) Provides that an insurer or health maintenance organization (HMO) is entitled to a credit on the amount of tax due under this chapter (Life, Health, and Accident Insurance Premium Tax) in a taxable year equal to the amount of the premium tax imposed in that year on the insurer’s or HMO’s recoupment amount for that year.

(c) Requires the commissioner of insurance (commissioner), by rule, to establish formulas to calculate the amount of the credit authorized by Subsection (b), including a formula to calculate an insurer’s or HMO’s recoupment amount and the recoupment amount attributable to an insurer or HMO if the fees are imposed on a controlled group, as defined by Section 9010(c)(3), Affordable Care Act.

SECTION 2. Amends Chapter 257, Insurance Code, by adding Section 257.005, as follows:

Sec. 257.005. CREDIT FOR CERTAIN FEDERAL FEES PAID. (a) Defines “Affordable Care Act” and “recoupment amount.”

(b) Provides that an insurer is entitled to a credit on the amount of tax due under this chapter (Life, Health, and Accident Insurance) in a taxable year equal to the amount of the premium tax imposed in that year on the insurer’s recoupment amount for that year.

(c) Requires the commissioner, by rule, to establish formulas to calculate the amount of the credit authorized by Subsection (b), including a formula to calculate an insurer’s recoupment amount and the recoupment amount attributable to an insurer if the fees are imposed on a controlled group, as defined by Section 9010(c)(3), Affordable Care Act.

SECTION 3. Provides that the changes in law made by this Act apply only to a tax liability accruing on or after January 1, 2014.

SECTION 4. Requires the Texas comptroller of public accounts and the commissioner to adopt rules necessary to implement the changes in law made by this Act.

SECTION 5. Effective date: upon passage or September 1, 2017.