

By: Lucio III

H.B. No. 4435

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a health insurance risk pool for certain health benefit plan enrollees; authorizing an assessment.

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

SECTION 1. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1511 to read as follows:

CHAPTER 1511. HEALTH INSURANCE RISK POOL

Sec. 1511.001. DEFINITION. In this chapter, "pool" means a health insurance risk pool established and administered by the commissioner under this chapter.

Sec. 1511.002. ESTABLISHMENT OF HEALTH INSURANCE RISK POOL. To the extent that federal funds are available, the commissioner may:

(1) apply for the federal funds; and

(2) use the federal funds to establish and administer a pool for the purpose of this chapter.

Sec. 1511.003. PURPOSE OF POOL. (a) The purpose of the pool is to provide a mechanism to meaningfully reduce health insurance premiums in the individual health insurance market by maximizing available federal funds to assist residents of this state to obtain guaranteed issue health benefit coverage.

(b) The pool may not be used to expand the Medicaid program, including the program administered under Chapter 32, Human Resources Code, and the program administered under Chapter 533,

1 Government Code.

2 Sec. 1511.004. METHODS TO REDUCE PREMIUM IN THE INDIVIDUAL
3 MARKET. Subject to any requirements to obtain federal funds for the
4 pool, the commissioner may use money from the pool to achieve lower
5 enrollee premium rates by providing to health benefit plan issuers
6 writing guaranteed issue coverage in the individual market:

7 (1) a reinsurance program; or

8 (2) direct funding if the health benefit plan issuer's
9 plan provides coverage for individuals described by Section
10 1511.005.

11 Sec. 1511.005. ACCESS TO GUARANTEED ISSUE COVERAGE. The
12 commissioner shall use pool funds to enhance enrollment in
13 guaranteed issue coverage in the individual market in a manner that
14 ensures that the benefits and cost-sharing protections available in
15 the individual market are maintained in the same manner the
16 benefits and protections would be maintained without the waiver
17 described by Section 1511.020.

18 Sec. 1511.006. CONTRACTS AND AGREEMENTS. The commissioner
19 may enter into a contract or agreement that the commissioner
20 determines is appropriate to carry out this chapter, including a
21 contract or agreement with:

22 (1) a similar pool in another state for the joint
23 performance of common administrative functions;

24 (2) another organization for the performance of
25 administrative functions; or

26 (3) a federal agency.

27 Sec. 1511.007. FUNDING. (a) The commissioner may use funds

1 appropriated to the department to:

2 (1) apply for federal funds and grants; and

3 (2) administer this chapter.

4 (b) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
5 1367), Acts of the 83rd Legislature, Regular Session, 2013, the
6 commissioner may use money appropriated to the department from the
7 healthy Texas small employer premium stabilization fund for the
8 exclusive purposes of this chapter, other than for paying salaries
9 and salary-related benefits.

10 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
11 1367), Acts of the 83rd Legislature, Regular Session, 2013, the
12 commissioner shall transfer money from the healthy Texas small
13 employer premium stabilization fund to the Texas Department of
14 Insurance operating account in an amount equal to the amount of
15 money appropriated to the department from that fund, as described
16 by Subsection (b), for the direct and indirect costs of the
17 exclusive purposes of this chapter.

18 (d) Except as provided by Subsections (a) and (b), the
19 commissioner may not use any state funds to fund the pool unless the
20 funds are specifically appropriated for that purpose.

21 Sec. 1511.008. ASSESSMENTS. (a) The commissioner may
22 assess health benefit plan issuers, including making advance
23 interim assessments, as reasonable and necessary for the pool's
24 organizational and interim operating expenses.

25 (b) The commissioner shall credit an interim assessment as
26 an offset against any regular assessment that is due after the end
27 of the fiscal year.

1 (c) The regular assessment is the amount determined by the
2 commissioner under Section 1511.009 and recovered from health
3 benefit plan issuers under Section 1511.013.

4 Sec. 1511.009. DETERMINATION OF POOL FUNDING REQUIREMENTS.
5 After the end of each fiscal year, the commissioner shall determine
6 for the next calendar year the amount of money required by the pool
7 to reduce the amount of premiums the enrollee would otherwise pay in
8 that year by 15 percent in accordance with this chapter after
9 applying the federal funds obtained under this chapter.

10 Sec. 1511.010. ANNUAL REPORT TO COMMISSIONER. Each health
11 benefit plan issuer shall report to the commissioner the
12 information requested by the commissioner, as of December 31 of the
13 preceding year.

14 Sec. 1511.011. ANNUAL REPORT TO COMMISSIONER: ENROLLED
15 INDIVIDUALS. (a) Each health benefit plan issuer shall report to
16 the commissioner the number of residents of this state enrolled, as
17 of December 31 of the previous year, in the issuer's health benefit
18 plans providing coverage for residents in this state, as:

- 19 (1) an employee under a group health benefit plan; or
20 (2) an individual policyholder or subscriber.

21 (b) In determining the number of individuals to report under
22 Subsection (a)(1), the health benefit plan issuer shall include
23 each employee for whom a premium is paid and coverage is provided
24 under an excess loss, stop-loss, or reinsurance policy issued by
25 the issuer to an employer or group health benefit plan providing
26 coverage for employees in this state. A health benefit plan issuer
27 providing excess loss insurance, stop-loss insurance, or

1 reinsurance, as described by this subsection, for a primary health
2 benefit plan issuer may not report individuals reported by the
3 primary health benefit plan issuer.

4 (c) Ten employees covered by a health plan issuer under a
5 policy of excess loss insurance, stop-loss insurance, or
6 reinsurance count as one employee for purposes of determining that
7 health plan issuer's assessment.

8 (d) In determining the number of individuals to report under
9 this section, the health benefit plan issuer shall exclude:

10 (1) the dependents of the employee or an individual
11 policyholder or subscriber; and

12 (2) individuals who are covered by the health benefit
13 plan issuer under a Medicare supplement benefit plan subject to
14 Chapter 1652.

15 (e) In determining the number of enrolled individuals to
16 report under this section, the health benefit plan issuer shall
17 exclude individuals who are retired employees 65 years of age or
18 older.

19 Sec. 1511.012. ANNUAL REPORT TO COMMISSIONER: GROSS
20 PREMIUMS. (a) Each health benefit plan issuer shall report to the
21 commissioner the gross premiums collected for the preceding
22 calendar year for health benefit plans.

23 (b) For purposes of this section, gross health benefit plan
24 premiums do not include premiums collected for:

25 (1) coverage under a Medicare supplement benefit plan
26 subject to Chapter 1652;

27 (2) coverage under a small employer health benefit

1 plan subject to Chapter 1501;

2 (3) coverage:

3 (A) for wages or payments in lieu of wages for a
4 period during which an employee is absent from work because of
5 accident or disability;

6 (B) as a supplement to a liability insurance
7 policy;

8 (C) for credit insurance;

9 (D) only for dental or vision care;

10 (E) only for a specified disease or illness; or

11 (F) only for indemnity for hospital confinement;

12 (4) a workers' compensation insurance policy;

13 (5) medical payment insurance coverage provided under
14 a motor vehicle insurance policy;

15 (6) a long-term care policy, including a nursing home
16 fixed indemnity policy, unless the commissioner determines that the
17 policy provides comprehensive health benefit plan coverage;

18 (7) liability insurance coverage, including general
19 liability insurance and automobile liability insurance;

20 (8) coverage for on-site medical clinics;

21 (9) insurance coverage under which benefits are
22 payable with or without regard to fault and that is statutorily
23 required to be contained in a liability insurance policy or
24 equivalent self-insurance; or

25 (10) other similar insurance coverage, as specified by
26 federal regulations issued under the Health Insurance Portability
27 and Accountability Act of 1996 (Pub. L. No. 104-191), under which

1 benefits for medical care are secondary or incidental to other
2 insurance benefits.

3 Sec. 1511.013. ASSESSMENTS TO COVER POOL FUNDING
4 REQUIREMENTS. (a) The commissioner shall recover an amount equal
5 to the funding required as estimated under Section 1511.009 by
6 assessing each health benefit plan issuer an amount determined
7 annually by the commissioner based on information in annual
8 statements, the health benefit plan issuer's annual report to the
9 commissioner under Sections 1511.010 and 1511.011, and any other
10 reports required by and filed with the commissioner.

11 (b) The commissioner shall use the total number of enrolled
12 individuals reported by all health benefit plan issuers under
13 Section 1511.011 as of the preceding December 31 to compute the
14 amount of a health benefit plan issuer's assessment, if any, in
15 accordance with this subsection. The commissioner shall allocate
16 the total amount to be assessed based on the total number of
17 enrolled individuals covered by excess loss, stop-loss, or
18 reinsurance policies and on the total number of other enrolled
19 individuals as determined under Section 1511.011. To compute the
20 amount of a health benefit plan issuer's assessment:

21 (1) for the issuer's enrolled individuals covered by
22 an excess loss, stop-loss, or reinsurance policy, the commissioner
23 shall:

24 (A) divide the allocated amount to be assessed by
25 the total number of enrolled individuals covered by excess loss,
26 stop-loss, or reinsurance policies, as determined under Section
27 1511.011, to determine the per capita amount; and

1 (B) multiply the number of a health benefit plan
2 issuer's enrolled individuals covered by an excess loss, stop-loss,
3 or reinsurance policy, as determined under Section 1511.011, by the
4 per capita amount to determine the amount assessed to that health
5 benefit plan issuer; and

6 (2) for the issuer's enrolled individuals not covered
7 by excess loss, stop-loss, or reinsurance policies, the
8 commissioner, using the gross health benefit plan premiums reported
9 for the preceding calendar year by health benefit plan issuers
10 under Section 1511.012, shall:

11 (A) divide the gross premium collected by a
12 health benefit plan issuer by the gross premium collected by all
13 health benefit plan issuers; and

14 (B) multiply the allocated amount to be assessed
15 by the fraction computed under Paragraph (A) to determine the
16 amount assessed to that health benefit plan issuer.

17 (c) A small employer health benefit plan subject to Chapter
18 1501 is not subject to an assessment under this section.

19 Sec. 1511.014. ASSESSMENT DUE DATE; INTEREST. (a) An
20 assessment is due on the date specified by the commissioner that is
21 not earlier than the 30th day after the date written notice of the
22 assessment is transmitted to the health benefit plan issuer.

23 (b) Interest accrues on the unpaid amount of an assessment
24 at a rate equal to the prime lending rate, as published in the most
25 recent issue of the Wall Street Journal and determined as of the
26 first day of each month during which the assessment is delinquent,
27 plus three percent.

1 Sec. 1511.015. ABATEMENT OR DEFERMENT OF ASSESSMENT. (a) A
2 health benefit plan issuer may petition the commissioner for an
3 abatement or deferment of all or part of an assessment imposed by
4 the commissioner. The commissioner may abate or defer all or part
5 of the assessment if the commissioner determines that payment of
6 the assessment would endanger the ability of the health benefit
7 plan issuer to fulfill its contractual obligations.

8 (b) If all or part of an assessment against a health benefit
9 plan issuer is abated or deferred, the amount of the abatement or
10 deferment shall be assessed against the other health benefit plan
11 issuers in a manner consistent with the method for computing
12 assessments under this chapter.

13 (c) A health benefit plan issuer receiving an abatement or
14 deferment under this section remains liable to the pool for the
15 deficiency.

16 Sec. 1511.016. USE OF EXCESS FROM ASSESSMENTS. If the total
17 amount of the assessments exceeds the pool's actual losses and
18 administrative expenses, the commissioner shall credit each health
19 benefit plan issuer with the excess in an amount proportionate to
20 the amount the health benefit plan issuer paid in assessments. The
21 credit may be paid to the health benefit plan issuer or applied to
22 future assessments under this chapter.

23 Sec. 1511.017. COLLECTION OF ASSESSMENTS. The pool may
24 recover or collect assessments made under this chapter.

25 Sec. 1511.018. PROCEDURES, CRITERIA, AND FORMS. The
26 commissioner by rule shall provide the procedures, criteria, and
27 forms necessary to implement, collect, and deposit assessments

1 under this chapter.

2 Sec. 1511.019. PUBLIC EDUCATION AND OUTREACH. (a) The
3 commissioner may use funds appropriated to the department for the
4 exclusive purposes of this chapter to develop and implement public
5 education, outreach, and facilitated enrollment strategies under
6 this chapter.

7 (b) The commissioner may contract with marketing
8 organizations to perform or provide assistance with the strategies
9 described by Subsection (a).

10 Sec. 1511.020. WAIVER. The commissioner may:

11 (1) apply to the United States secretary of health and
12 human services under 42 U.S.C. Section 18052 for a waiver of
13 applicable provisions of the Patient Protection and Affordable Care
14 Act (Pub. L. No. 111-148) and any applicable regulations or
15 guidance;

16 (2) take any action the commissioner considers
17 appropriate to make an application under Subdivision (1); and

18 (3) implement a state plan that meets the requirements
19 of a waiver granted in response to an application under Subdivision
20 (1) if the plan is:

21 (A) consistent with state and federal law; and

22 (B) approved by the United States secretary of
23 health and human services.

24 Sec. 1511.021. AUTHORITY TO ACT AS REINSURER. In addition
25 to the powers granted to the commissioner under this chapter, the
26 commissioner may exercise any authority that may be exercised under
27 the law of this state by a reinsurer.

1 Sec. 1511.022. RULES. The commissioner may adopt rules
2 necessary to implement this chapter, including rules to administer
3 the pool and distribute money from the pool.

4 Sec. 1511.023. EXEMPTION FROM STATE TAXES AND FEES.
5 Notwithstanding any other law, a program created under this chapter
6 is not subject to any state tax, regulatory fee, or surcharge,
7 including a premium or maintenance tax or fee.

8 Sec. 1511.024. ANNUAL REPORT OF POOL ACTIVITIES. (a)
9 Beginning June 1, 2020, not later than June 1 of each year, the
10 department shall submit a report to the governor, the lieutenant
11 governor, and the speaker of the house of representatives.

12 (b) The report submitted under Subsection (a) must
13 summarize the activities conducted under this chapter in the
14 calendar year preceding the year in which the report is submitted.

15 SECTION 2. Notwithstanding Section 6(d)(2), Chapter 615
16 (S.B. 1367), Acts of the 83rd Legislature, Regular Session, 2013,
17 on the effective date of this Act, the commissioner of insurance
18 shall transfer any money remaining outside the state treasury in
19 the Texas Treasury Safekeeping Trust Company account established
20 under Section 6(c), Chapter 615 (S.B. 1367), Acts of the 83rd
21 Legislature, Regular Session, 2013, to the health insurance risk
22 pool established by Chapter 1511, Insurance Code, as added by this
23 Act.

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2019.