

## **BILL ANALYSIS**

C.S.H.B. 573  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Health care sharing ministries are groups that organize themselves around a common faith to share members' medical expenses but do not act as insurers. Insurers guarantee the payment of qualifying claims, while health care sharing ministries do not. There are concerns that these ministries may misrepresent themselves as insurance to laypeople, creating confusion and frustration in the marketplace. C.S.H.B. 573 seeks to clarify a health care sharing ministry's authority and to provide for regulation of these ministries by establishing certain filing requirements and regulation through the Texas Department of Insurance. The bill also provides for certain enforcement mechanisms to hold health care sharing ministries accountable for certain violations.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 573 transfers provisions relating to the operation of health care sharing ministries from the Insurance Code to the Business & Commerce Code and amends those provisions and adds new provisions that provide for the operation and regulation of health care sharing ministries in Texas.

C.S.H.B. 573 requires a person to file certain information with the Texas Department of Insurance (TDI) in the form and manner prescribed by the commissioner of insurance to operate as a health care sharing ministry in Texas and establishes provisions regulating such health care sharing ministries. The bill also establishes enforcement provisions regarding violations of law governing health care sharing ministries or other law. The bill authorizes a student at an institution of higher education who is a member of a health care sharing ministry to use the membership to comply with a requirement by the institution that the student maintain health benefit coverage.

C.S.H.B. 573 requires a person intending to operate a health care sharing ministry to include in the filing all information required by the commissioner and sets out information the filing must include. The bill requires a health care sharing ministry to submit an annual filing of certain information to TDI in the form and manner prescribed by the commissioner, sets out the information the annual filing must include, and provides for an exception to a requirement to

include in the information a certification that the health care sharing ministry does not compensate anyone to solicit or enroll members in Texas based on certain criteria.

C.S.H.B. 573 requires the commissioner by rule to set a fee for a filing under the bill's provisions in an amount not to exceed \$100 and requires the fee to be deposited to the credit of the TDI operating account. The bill requires a health care sharing ministry that fails to timely submit a filing to pay a fee, as prescribed by the bill, that is based on the number of days a filing is late. If a health care sharing ministry fails to submit a filing within 90 days of the deadline, the ministry is prohibited from operating as a health care sharing ministry for two years.

C.S.H.B. 573 provides for the regulation of health care sharing ministries as follows:

- a health care sharing ministry may not operate under any name other than the name under which the ministry has submitted a filing;
- a health care sharing ministry may not do the following in all communications with the public:
  - make a direct or indirect representation that the ministry provides insurance or that a health care service is free or included with membership; or
  - include "premium," "copay," "deductible," "coverage," "network," "benefit plan," or a similar term in marketing except to explain the differences between a health care sharing ministry and insurance;
- a violation of the bill's communication prohibitions is a false, misleading, or deceptive act or practice in violation of the Deceptive Trade Practices Act;
- a health care sharing ministry may not compensate anyone, except as provided by the bill, to solicit or enroll members in Texas based on the number of members solicited or enrolled or the amount of contributions received from enrolled members, including by commission, at a certain rate;
- a health care sharing ministry is required to disclose in writing for each calendar year from the previous five calendar years certain enrollment information, as prescribed by the bill, in a prominent and conspicuous manner before and at the time an individual is enrolled as a member;
- a health care sharing ministry must provide a prominent and conspicuous written quarterly and annual statement to all members that includes the following information, with respect to that quarter and calendar year:
  - the number of members participating;
  - the amount of money contributed by members;
  - the number of and monetary amount of all submitted and paid sharing requests and the amount of member contributions remaining for future sharing requests;
  - the amount of administrative fees;
  - the percentage of money paid by members that was paid toward sharing requests, administrative fees, and any amount remaining that is designated for the payment of future sharing requests; and
  - the total amount of membership contributions waived for participants in a new member enrollment program;
- a health care sharing ministry must provide, in the following manner, notices stating that, among other things, the payment of medical expenses is not guaranteed:
  - a written notice must be provided on or must accompany all applications, guideline materials, and written advertisements, including print and digital advertisements, distributed by or on behalf of the ministry; and
  - a notice must be provided in any audio or visual advertisement clearly, conspicuously, and in a manner that a listener would hear and understand;
- a health care sharing ministry must conduct an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and made available to the public on request; and
- a health care sharing ministry may not conduct an excess benefit transaction as defined by specified federal law.

C.S.H.B. 573 authorizes the attorney general ex parte to issue a cease and desist order if the attorney general believes that a person is operating a health care sharing ministry in violation of provisions relating to health care sharing ministries and the alleged conduct is fraudulent, hazardous, creates an immediate danger to the public, or is causing or could cause certain public injury. The bill does the following with respect to the cease and desist order:

- requires the cease and desist order to:
  - be served on the person by registered or certified mail, return receipt requested, at the person's last known address;
  - contain a statement of the charges; and
  - require the person to immediately cease and desist from the acts, methods, or practices stated in the order;
- entitles the person affected by the order to request a hearing to contest the order, which is a contested case under the Administrative Procedure Act;
- establishes the date on which the order is final and, pending a hearing, that the order continues unless it is stayed by the attorney general;
- requires the attorney general to provide written notice of the opportunity to request a hearing, to set a hearing if requested, and to notify the affected person of the hearing; and
- requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the attorney general a proposal for a decision regarding the order.

C.S.H.B. 573 makes a person who violates provisions relating to health care sharing ministries or the cease and desist order liable to the state for a civil penalty in an amount not to exceed \$25,000 for each violation. The bill sets out the circumstances the court is required to consider in determining the amount of the civil penalty. The bill authorizes the attorney general, if the attorney general believes that a health care sharing ministry or another person is violating or has violated provisions relating to health care sharing ministries, to bring an action in a Travis County district court to enjoin the violation, recover a civil penalty, order restitution, and obtain other relief the court considers appropriate. A remedy or action authorized by the bill's provisions is in addition to any other civil, administrative, or criminal action provided by law.

C.S.H.B. 573 defines "health care sharing ministry" for purposes of its provisions by repurposing the current provisions establishing the conditions under which a faith-based, nonprofit organization is considered to be a health care sharing ministry. Accordingly, the bill provides that a health care sharing ministry is a faith-based 501(c)(3) tax-exempt organization that:

- limits its participants to individuals of a similar faith;
- acts as a facilitator among participants who have medical bills and matches those participants with other participants with the present ability to assist those with medical bills in accordance with criteria established by the health care sharing ministry;
- provides for the medical bills of a participant through contributions from one participant to another;
- provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants; and
- does not operate a discount health care program, as defined by the Insurance Code.

C.S.H.B. 573 provides the following with respect to a health care sharing ministry operating in Texas immediately before the bill's effective date:

- a health care sharing ministry is not required to submit a filing before March 1, 2022, and may continue operating without a filing until April 1, 2022; but
- a health care sharing ministry that fails to submit a filing before March 1, 2022, may not operate as a health care sharing ministry until the ministry submits a filing on or after March 1, 2024.

## **EFFECTIVE DATE**

September 1, 2021.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 573 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute transfers from the Insurance Code to the Business & Commerce Code the original's provisions, as changed and reorganized by the substitute, relating to health care sharing ministries. Among these transferred provisions are the following:

- the existing statutory provisions relating to such ministries that were amended by the original; and
- an existing statutory provision, which was unamended by the original and is nonsubstantively amended in the substitute, establishing that a health care sharing ministry acting in accordance with the newly transferred and revised law is not considered to be engaging in the business of insurance.

The original did not transfer any new or existing provisions from one code to the other.

The substitute changes the explicit definition for "health care sharing ministry," which was included in the original, to incorporate into that definition the substitute's revised contents of the existing statutory provision specifying the conditions qualifying a faith-based nonprofit organization to be considered a health care sharing ministry. Those conditions are further revised by the substitute to reflect the substitute's incorporation of the revised conditions into the substitute's quarterly and annual statements to members. The original repealed that entire provision specifying the qualifying conditions.

The substitute includes an authorization, which was not included in the original, for a student at an institution of higher education who is a member of a health care sharing ministry to use such membership to comply with a requirement of the institution that the student maintain health benefit coverage.

The substitute does not include a requirement, which was included in the original, for a person to obtain and maintain a certificate of registration to operate as a health care sharing ministry nor does the substitute include any of the original's provisions relating to the certificate, to renewal of the certificate, or to the fees imposed on the late renewal of a certificate. Instead, the substitute incorporates into filing requirements certain provisions included in the original as they related to the issuance and renewal of a certificate of registration and includes the following:

- a requirement, which was not included in the original, for a person to file certain information, most of which was included in the original, with the commissioner of insurance to operate as a health care sharing ministry;
- specifications that, with respect to a certification regarding compensation required by both the original for its registration purpose and the substitute for its filing purpose:
  - the ministry does not compensate anyone to solicit or enroll members on the applicable basis at a rate of more than five percent of the membership fee received in the first year of membership; and
  - establish certain exceptions to the applicability of the certification requirement;
- provisions relating to the initial filing, an updated annual filing, a filing fee, a late filing, and a late filing fee paid to TDI, which were not included in the original;
- a requirement for the filing fee to be deposited to the credit of the TDI operating account; and
- provisions conforming certain of the original's provisions to the substitute's provisions regarding the filing.

The substitute revises provisions, which were included in the original, relating to the name and to the marketing and communications of a health care sharing ministry. The substitute includes a provision not included in the original making a violation of the substitute's communication prohibitions a false, misleading, or deceptive act or practice in violation of the Deceptive Trade Practices Act.

The original prohibited compensation by a health care sharing ministry for services provided to members in Texas based on the number of members solicited or enrolled or the amount of contributions received from enrolled members, including by commission. The substitute changes that prohibition to instead provide that a health care sharing ministry may not compensate anyone to solicit or enroll members in Texas based on the number of members solicited or enrolled or the amount of contributions received from enrolled members, including by commission, at a rate of more than five percent of the membership fee received in the first year of membership. In addition, the substitute adds a clarification with respect to the new prohibition's applicability.

The substitute changes from monthly, as required by the original, to quarterly the frequency with which a health care sharing ministry must provide a certain prescribed statement to all members. Both the original and the substitute require an annual statement but the substitute revises that prescribed information. The substitute adds additional matters to be included in the following respective disclosures:

- in the substitute's required annual filing with respect to an organization financial report detailing matters for the prior registration period, the total equivalent monetary amount of membership contributions waived for participants rewarded by referring others to a new member enrollment program; and
- in the quarterly and annual statement of prescribed information, the total amount of membership contributions waived for the applicable quarter and calendar year for participants in a new member enrollment program.

The original changed the written notice a health care sharing ministry must provide with respect to all applications, guideline materials, and written advertisements, including print and digital advertisements, distributed by or on behalf of the ministry by requiring the notice to state that complaints concerning the ministry may be reported to TDI, rather than to the attorney general as required by current law. However, the substitute retains the current law's requirement for the notice to state that the complaints may be reported to the attorney general.

The substitute also replaces certain of the original's enforcement actions, which were to be carried out by the commissioner of insurance, with the following cease and desist order provisions and civil penalty provisions:

- provisions authorizing the attorney general ex parte to issue an emergency cease and desist order, provisions imposing certain requirements on such orders, provisions entitling an affected person to request a hearing to contest the hearing, and provisions setting out certain matters related to that hearing; and
- provisions establishing a civil penalty for a violation of provisions governing a health care sharing ministry.

The substitute does not include the original's authorization for the commissioner of insurance to impose an administrative penalty or to impose a sanction generally applicable to matters of discipline and enforcement under the Insurance Code.

With respect to the original's injunction provisions, the substitute does not include the original's specification that the attorney general's authorization to bring an action in a Travis County district court is triggered by the request of the commissioner of insurance.

The substitute does not include the original's provision requiring a health care sharing ministry to operate in accordance with certain federal law regarding the maintenance of minimum essential coverage. The substitute includes a provision not included in the original that prohibits

a health care sharing ministry from conducting an excess benefit transaction as defined by certain federal law.

The substitute includes conforming changes not included in the original and revises procedural provisions included in the original to reflect and update the substitute's transfers and revisions.