87R19880 SCL-F

By:  Oliverson, Sanford, Jetton H.B. No. 573

Substitute the following for H.B. No. 573:

By:  Oliverson C.S.H.B. No. 573

A BILL TO BE ENTITLED

AN ACT

relating to the operation of health care sharing ministries; authorizing a fee; providing a civil penalty.

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

SECTION 1.  Chapter 1681, Insurance Code, is transferred to Subtitle C, Title 5, Business & Commerce Code, redesignated as Chapter 113, Business & Commerce Code, and amended to read as follows:

CHAPTER 113 [~~1681~~]. HEALTH CARE SHARING MINISTRIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001.  DEFINITIONS. In this chapter:

(1)  "Administrative fee" means an amount collected from members and used for a purpose other than reimbursing members for their medical expenses, including amounts used to pay for health care sharing ministry administrative expenses and the compensation of third-party vendors for services.

(2)  "Commissioner" means the commissioner of insurance.

(3)  "Department" means the Texas Department of Insurance.

(4)  "Health care sharing ministry" means a [~~Sec. 1681.001. TREATMENT AS HEALTH CARE SHARING MINISTRY. A~~] faith-based, nonprofit organization described by 26 U.S.C. Section 501(c)(3) and exempt from taxation under 26 U.S.C. Section 501(a) that [~~is tax-exempt under the Internal Revenue Code of 1986 qualifies for treatment as a health care sharing ministry under this chapter if it~~]:

(A) [~~(1)~~]  limits its participants to individuals of a similar faith;

(B) [~~(2)~~]  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;

(C) [~~(3)~~]  provides for the medical bills of a participant through contributions from one participant to another;

(D) [~~(4)~~]  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

(E) [~~(5)  provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution;~~

[~~(6)  discloses administrative fees and costs to participants;~~

[~~(7)  provides that any card issued to a participant for the purpose of presentation to a health care provider clearly indicates that the participant is part of a health care sharing ministry that is not engaging in the business of insurance;~~

[~~(8)  provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the ministry that complies with Section 1681.002; and~~

[~~(9)~~]  does not operate a discount health care program as defined by Section 7001.001, Insurance Code.

(5)  "Member" means an individual enrolled in a health care sharing ministry to share medical expenses with other enrolled individuals.

(6)  "Sharing request" means a request for reimbursement of medical expenses submitted by a member to the health care sharing ministry.

[~~Sec. 1681.002.  NOTICE. To qualify as a health care sharing ministry under this chapter, the notice described by Section 1681.001(8) must read substantially as follows:~~

[~~"Notice: This health care sharing ministry facilitates the sharing of medical expenses and is not an insurance company, and neither its guidelines nor its plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the ministry or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this ministry continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the office of the Texas attorney general."~~]

Sec. 113.002 [~~1681.003~~].  EXEMPTION. Notwithstanding any [~~other~~] provision of the Insurance Code [~~this code~~], a health care sharing ministry that acts in accordance with this chapter is not considered to be engaging in the business of insurance.

Sec. 113.003.  EXEMPTION FROM HEALTH COVERAGE REQUIREMENT BY INSTITUTION OF HIGHER EDUCATION. A student at an institution of higher education who is a member of a health care sharing ministry may use the membership to comply with a requirement by the institution that the student maintain health benefit coverage.

SUBCHAPTER B. FILING REQUIREMENTS

Sec. 113.051.  INITIAL FILING REQUIREMENT. (a) A person must file information described by Subsection (b) with the department in the form and manner prescribed by the commissioner to operate as a health care sharing ministry in this state.

(b)  A person intending to operate a health care sharing ministry must include in the filing described by Subsection (a) all information required by the commissioner, including:

(1)  the responsible director or manager of the ministry;

(2)  the ministry's physical, mailing, and electronic mail addresses;

(3)  the contact phone number for the responsible director or manager of the ministry;

(4)  information demonstrating that the ministry meets the definition of a health care sharing ministry under Section 113.001;

(5)  a copy of the most recent annual audit created by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public on request;

(6)  a list of any third-party vendors acting on behalf of the ministry in this state for the purposes of:

(A)  enrolling members;

(B)  negotiating with health care providers after services are rendered; or

(C)  the financial sharing of member medical needs;

(7)  a copy of any application forms and organization guidelines used by the ministry;

(8)  a report of the ministry's members in this state as of the date of the filing that includes the:

(A)  total number of enrolled members;

(B)  distribution of members by age; and

(C)  distribution of members by sex; and

(9)  a certification that the ministry does not compensate anyone to solicit or enroll members in this state 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.

(c)  Subsection (b)(9) does not apply to:

(1)  a salaried individual employed by the health care sharing ministry who does not receive any form of commission, compensation, or other valuable consideration based on enrolling new members; or

(2)  a new member referral program providing credit for membership for existing members of a health care sharing ministry who have referred new members only if the program is limited to credit for no more than 12 months of membership for the existing members annually.

Sec. 113.052.  ANNUAL FILING REQUIREMENT. (a) A health care sharing ministry shall submit an annual filing of information described by Subsection (b) to the department in the form and manner prescribed by the commissioner.

(b)  The annual filing must include all information required by the commissioner, including:

(1)  an update of any changes made to documents previously filed with the department;

(2)  a copy of the most recent annual audit required under 26 U.S.C. Section 5000A(d)(2)(B);

(3)  an organization financial report detailing the following for the prior registration period:

(A)  the total amount of money collected from members in this state, including contributions, administrative fees, or other funds;

(B)  the total number of sharing requests made by members in this state;

(C)  the total amount of money paid for health care services for members in this state;

(D)  the total number of sharing requests that were denied;

(E)  the total amount of administrative fees collected from members in this state, including amounts paid to each third-party vendor for services provided to members in this state; and

(F)  the total equivalent monetary amount of membership contributions waived for participants rewarded by referring others to a new member enrollment program;

(4)  a report of the health care sharing ministry's members in this state as of the date of the filing that includes the:

(A)  total number of enrolled members;

(B)  distribution of members by age; and

(C)  distribution of members by sex;

(5)  a report detailing the following:

(A)  the number of sharing requests made by members in this state that were approved for sharing;

(B)  the number of sharing requests made by members in this state that were denied for sharing; and

(C)  the number of complaints made by members in this state; and

(6)  a certification that the health care sharing ministry does not compensate anyone to solicit or enroll members in this state 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.

(c)  Subsection (b)(6) does not apply to:

(1)  a salaried individual employed by the health care sharing ministry who does not receive any form of commission, compensation, or other valuable consideration based on enrolling new members; or

(2)  a new member referral program providing credit for membership for existing members of a health care sharing ministry who have referred new members only if the program is limited to credit for no more than 12 months of membership for the existing members annually.

Sec. 113.053.  LATE FILING. (a) A health care sharing ministry that fails to timely submit a filing required by this subchapter must pay the following fee to the department:

(1)  $250 for a filing submitted 1 to 30 days late;

(2)  $500 for a filing submitted 31 to 60 days late; or

(3)  $1,000 for a filing submitted 61 to 90 days late.

(b)  If a health care sharing ministry fails to submit a filing required by this subchapter within 90 days after the filing's deadline, the ministry may not operate as a health care sharing ministry for two years.

Sec. 113.054.  FEES. Except as provided by Section 113.053, the commissioner by rule shall set a fee for a filing required under this subchapter in an amount not to exceed $100. A fee collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

SUBCHAPTER C. REGULATION OF HEALTH CARE SHARING MINISTRIES

Sec. 113.101.  NAME. A health care sharing ministry may not operate under any name other than the name under which the ministry has submitted a filing under Subchapter B.

Sec. 113.102.  MARKETING AND COMMUNICATION. (a) In all communications with the public, a health care sharing ministry may not:

(1)  make a direct or indirect representation that:

(A)  the ministry provides insurance; or

(B)  a health care service is free or included with membership; or

(2)  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.

(b)  A violation of this section is a false, misleading, or deceptive act or practice in violation of Section 17.46.

Sec. 113.103.  PROHIBITED COMPENSATION. (a) A health care sharing ministry may not compensate anyone to solicit or enroll members in this state 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.

(b)  This section does not apply to:

(1)  a salaried individual employed by the health care sharing ministry who does not receive any form of commission, compensation, or other valuable consideration based on enrolling new members; or

(2)  a new member referral program providing credit for membership for existing members of a health care sharing ministry who have referred new members only if the program is limited to credit for no more than 12 months of membership for the existing members annually.

Sec. 113.104.  ENROLLMENT DISCLOSURES. A health care sharing ministry shall disclose the following information in writing for each calendar year from the previous five calendar years in a prominent and conspicuous manner before and at the time an individual is enrolled as a member:

(1)  total member contributions;

(2)  total amounts paid for sharing requests;

(3)  total administrative fees paid by members; and

(4)  the percentage of money paid by members that was paid toward the following:

(A)  sharing requests; and

(B)  administrative fees.

Sec. 113.105.  QUARTERLY STATEMENTS. A health care sharing ministry must provide a prominent and conspicuous written quarterly and annual statement to all members that includes the following:

(1)  the number of members participating that quarter and for that calendar year;

(2)  the amount of money contributed by members that quarter and for that calendar year;

(3)  the number of and monetary amount of all sharing requests submitted that quarter and for that calendar year;

(4)  the number of and monetary amount of sharing requests paid that quarter and for that calendar year;

(5)  the amount of member contributions remaining for future sharing requests for that quarter and for that calendar year;

(6)  the amount of administrative fees for services to members for that quarter and for that calendar year, including:

(A)  the purpose of the administrative fee;

(B)  the amount paid for each type of administrative fee; and

(C)  any third-party vendor to which the fee is paid;

(7)  the percentage of money paid by members that was paid toward the following for that quarter and for that calendar year:

(A)  sharing requests;

(B)  administrative fees; and

(C)  any amount remaining that is designated for the payment of future sharing requests; and

(8)  the total amount of membership contributions waived for that quarter and for that calendar year for participants in a new member enrollment program.

Sec. 113.106.  NOTICE; DISCLOSURE. (a) A health care sharing ministry shall provide written notice on or accompanying all applications, guideline materials, and written advertisements, including print and digital advertisements, distributed by or on behalf of the ministry.

(b)  The notice described by Subsection (a) must be in at least 10-point font, in a prominent and conspicuous place, and read as follows:

"Notice: Payment of your medical expenses is not guaranteed. This health care sharing ministry facilitates the sharing of medical expenses and is not an insurance company, and neither its guidelines nor its plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the ministry or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this ministry continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the office of the Texas attorney general."

(c)  A health care sharing ministry shall provide the following notice in any audio or visual advertisement clearly, conspicuously, and in a manner that a listener would hear and understand:

"Payment of your medical expenses is not guaranteed. This health care sharing ministry facilitates the sharing of medical expenses, is not an insurance company, and is not offering an insurance policy. Regardless of whether you receive any payment for medical expenses or whether this ministry continues to operate, you are always personally responsible for the payment of your own medical bills."

(d)  A health care sharing ministry shall provide a written disclosure to a member at enrollment that states:

(1)  the member may not be exempt from Section 5000A(d)(2)(B) of the Internal Revenue Code; and

(2)  the member may be subject to a tax if Congress reinstates the tax.

Sec. 113.107.  ANNUAL AUDIT. A health care sharing ministry shall conduct an annual audit that is:

(1)  performed by an independent certified public accounting firm in accordance with generally accepted accounting principles; and

(2)  made available to the public on request.

Sec. 113.108.  EXCESS BENEFIT TRANSACTIONS PROHIBITED. A health care sharing ministry may not conduct an excess benefit transaction as defined by 26 U.S.C. Section 4958.

SUBCHAPTER D. ENFORCEMENT

Sec. 113.151.  CEASE AND DESIST ORDER. (a) The attorney general ex parte may issue an emergency cease and desist order if the attorney general believes that:

(1)  a person is operating a health care sharing ministry in violation of this chapter; and

(2)  the alleged conduct:

(A)  is fraudulent;

(B)  is hazardous or creates an immediate danger to public safety; or

(C)  is causing or can be reasonably expected to cause public injury that:

(i)  is likely to occur at any moment;

(ii)  is incapable of being repaired or rectified; and

(iii)  has or is likely to have influence or effect.

(b)  The cease and desist order must:

(1)  be served on the person by registered or certified mail, return receipt requested, at the person's last known address;

(2)  contain a statement of the charges; and

(3)  require the person to immediately cease and desist from the acts, methods, or practices stated in the order.

(c)  A person affected by the cease and desist order is entitled to request a hearing to contest the order. The hearing is a contested case under Chapter 2001, Government Code.

(d)  An order is final on the 31st day after the date it is received unless the affected person requests a hearing under Subsection (c). Pending a hearing under this section, the order continues in effect unless the order is stayed by the attorney general.

(e)  The attorney general shall provide to the affected person with the order written notice of the opportunity to request a contested case hearing under Chapter 2001, Government Code.

(f)  If the affected person requests a hearing under Subsection (c), the attorney general shall set a contested case hearing under Chapter 2001, Government Code, and notify the person of the hearing.

(g)  The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the attorney general a proposal for a decision regarding the order.

Sec. 113.152.  CIVIL PENALTY. (a) A person who violates this chapter, including a cease and desist order issued under Section 113.151, is liable to this state for a civil penalty in an amount not to exceed $25,000 for each violation.

(b)  In determining the amount of the civil penalty, the court shall consider:

(1)  the seriousness of the violation, including:

(A)  the nature, circumstances, extent, and gravity of the violation; and

(B)  the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2)  the economic harm to the public interest or public confidence caused by the violation;

(3)  the history of previous violations;

(4)  the amount necessary to deter future violations;

(5)  efforts to correct the violation;

(6)  whether the violation was intentional; and

(7)  any other matter that justice may require.

Sec. 113.153.  ENFORCEMENT ACTION. If the attorney general believes that a health care sharing ministry or another person is violating or has violated this chapter, the attorney general may bring an action in a Travis County district court to enjoin the violation, recover a civil penalty under Section 113.152, order restitution, and obtain other relief the court considers appropriate.

Sec. 113.154.  REMEDIES CUMULATIVE. A remedy or action authorized by this subchapter is in addition to any other civil, administrative, or criminal action provided by law.

SECTION 2.  Section 562.0041, Insurance Code, is amended to read as follows:

Sec. 562.0041.  EXEMPTION. This chapter does not apply to a health care sharing ministry operated under Chapter 113, Business & Commerce Code [~~1681~~].

SECTION 3.  Section 651.002(c), Insurance Code, is amended to read as follows:

(c)  This chapter does not apply to a health care sharing ministry operated under Chapter 113, Business & Commerce Code [~~1681~~].

SECTION 4.  Section 4151.0022, Insurance Code, is amended to read as follows:

Sec. 4151.0022.  NONAPPLICABILITY. This chapter does not apply to a health care sharing ministry operated under Chapter 113, Business & Commerce Code [~~1681~~].

SECTION 5.  Section 7001.002, Insurance Code, is amended to read as follows:

Sec. 7001.002.  EXEMPTION. This chapter does not apply to a program operator who is an insurer and who holds a certificate of authority under Title 6, or a health care sharing ministry operated under Chapter 113, Business & Commerce Code [~~1681~~].

SECTION 6.  Section 7002.004, Insurance Code, is amended to read as follows:

Sec. 7002.004.  EXEMPTION. This chapter does not apply to a health care sharing ministry operated under Chapter 113, Business & Commerce Code [~~1681~~].

SECTION 7.  (a) Notwithstanding Section 113.051, Business & Commerce Code, as added by this Act, a health care sharing ministry operating in this state immediately before the effective date of this Act is not required to submit a filing under Subchapter B, Chapter 113, Business & Commerce Code, as added by this Act, before March 1, 2022. The ministry may continue operating without a filing until April 1, 2022.

(b)  A health care sharing ministry described by Subsection (a) of this section that fails to submit a filing under Subchapter B, Chapter 113, Business & Commerce Code, as added by this Act, 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.

SECTION 8.  This Act takes effect September 1, 2021.