

By: Martinez Fischer

H.B. No. 3851

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1511.0001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors appointed under this chapter.

(2) "Pool" means a health insurance risk pool established under this chapter and administered by the board.

Sec. 1511.0002. WAIVER. The commissioner shall:

(1) apply to the United States secretary of health and human services under 42 U.S.C. Section 18052 for a waiver of Section 1312(c)(1) of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) and any applicable regulations or guidance beginning with the 2022 plan year;

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

(3) implement a state plan that meets the requirements of a waiver granted in response to an application under Subdivision

(1) if the plan is:

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

2 (B) approved by the United States secretary of
3 health and human services.

4 Sec. 1511.0003. 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. 1511.0004. NOTICE AND COMMENT. Following the grant of
9 a waiver under Section 1511.0002 and before the commissioner
10 implements a state plan under that section, the commissioner shall
11 hold a public hearing to solicit stakeholder comments regarding the
12 establishment of a health insurance risk pool under this chapter.

13 SUBCHAPTER B. ESTABLISHMENT AND PURPOSE

14 Sec. 1511.0051. ESTABLISHMENT OF HEALTH INSURANCE RISK
15 POOL. To the extent that federal money is available and only if the
16 United States secretary of health and human services grants the
17 waiver application submitted under Section 1511.0002, the
18 commissioner shall:

19 (1) apply for the federal money;

20 (2) use the federal money to establish a pool for the
21 purpose of this chapter; and

22 (3) authorize the board to use the federal money to
23 administer a pool for the purpose of this chapter.

24 Sec. 1511.0052. PURPOSE OF POOL. The purpose of the pool is
25 to provide a reinsurance mechanism to:

26 (1) meaningfully reduce health benefit plan premiums
27 in the individual market by mitigating the impact of high-risk

1 individuals on rates;

2 (2) maximize available federal money to assist
3 residents of this state to obtain guaranteed issue health benefit
4 coverage without increasing the federal deficit; and

5 (3) increase enrollment in guaranteed issue,
6 individual market health benefit plans that provide benefits and
7 coverage and cost-sharing protections against out-of-pocket costs
8 comparable to and as comprehensive as health benefit plans that
9 would be available without the pool.

10 SUBCHAPTER C. ADMINISTRATION

11 Sec. 1511.0101. BOARD OF DIRECTORS. (a) The pool is
12 governed by a board of directors.

13 (b) The board consists of nine members appointed by the
14 commissioner as follows:

15 (1) at least two, but not more than four, members must
16 be individuals who are affiliated with a health benefit plan issuer
17 authorized to write health benefit plans in this state;

18 (2) at least two members must be:

19 (A) individuals or the parents of individuals who
20 are covered by the pool or are reasonably expected to qualify for
21 coverage by the pool; or

22 (B) individuals who work as advocates for
23 individuals described by Paragraph (A); and

24 (3) the other members may be selected from individuals
25 such as:

26 (A) a physician licensed to practice in this
27 state by the Texas State Board of Medical Examiners;

1 (B) a hospital administrator;

2 (C) an advanced nurse practitioner; or

3 (D) a representative of the public who is not:

4 (i) employed by or affiliated with an
5 insurance company or insurance plan, group hospital service
6 corporation, or health maintenance organization;

7 (ii) related within the first degree of
8 consanguinity or affinity to an individual described by
9 Subparagraph (i); or

10 (iii) licensed as, employed by, or
11 affiliated with a physician, hospital, or other health care
12 provider.

13 (c) For purposes of Subsection (b), an individual who is
14 required to register under Chapter 305, Government Code, because of
15 the individual's activities with respect to health benefit
16 plan-related matters is affiliated with a health benefit plan
17 issuer.

18 (d) An individual is not disqualified under Subsection
19 (b)(3)(D)(i) from representing the public if the individual's only
20 affiliation with an insurance company or insurance plan, group
21 hospital service corporation, or health maintenance organization
22 is as an insured or as an individual who has coverage through a plan
23 provided by the corporation or organization.

24 Sec. 1511.0102. TERMS; VACANCY. (a) Board members serve
25 staggered six-year terms.

26 (b) The commissioner shall fill a vacancy on the board by
27 appointing, for the unexpired term, an individual who has the

1 appropriate qualifications to fill that position.

2 Sec. 1511.0103. PRESIDING OFFICER. The commissioner shall
3 designate one board member to serve as presiding officer at the
4 pleasure of the commissioner.

5 Sec. 1511.0104. PER DIEM; REIMBURSEMENT. A board member is
6 not entitled to compensation for service on the board but is
7 entitled to:

8 (1) a per diem in the amount provided by the General
9 Appropriations Act for state officials for each day the member
10 performs duties as a board member; and

11 (2) reimbursement of expenses incurred while
12 performing duties as a board member in the amount provided by the
13 General Appropriations Act for state officials.

14 Sec. 1511.0105. MEMBER'S IMMUNITY. (a) A board member is
15 not liable for an act or omission made in good faith in the
16 performance of powers and duties under this chapter.

17 (b) A cause of action does not arise against a board member
18 for an act or omission described by Subsection (a).

19 Sec. 1511.0106. ADDITIONAL POWERS AND DUTIES. The
20 commissioner by rule may establish powers and duties of the board in
21 addition to those provided by this chapter.

22 Sec. 1511.0107. PLAN OF OPERATION. (a) Operation and
23 management of the pool are governed by a plan of operation adopted
24 by the board and approved by the commissioner. The plan of
25 operation includes the articles, bylaws, and operating rules of the
26 pool.

27 (b) The plan of operation must ensure the fair, reasonable,

1 and equitable administration of the pool.

2 (c) The board shall amend the plan of operation as necessary
3 to carry out this chapter. An amendment to the plan of operation
4 must be approved by the commissioner before the board may adopt the
5 amendment.

6 SUBCHAPTER D. POWERS AND DUTIES

7 Sec. 1511.0151. METHODS TO REDUCE PREMIUM IN INDIVIDUAL
8 MARKET. Subject to any requirements to obtain federal money for the
9 pool, the board may use pool money to achieve lower enrollee premium
10 rates by establishing a reinsurance mechanism for health benefit
11 plan issuers writing comprehensive, guaranteed issue coverage in
12 the individual market.

13 Sec. 1511.0152. INCREASED ACCESS TO GUARANTEED ISSUE
14 COVERAGE. The board shall use pool money to increase enrollment in
15 guaranteed issue coverage in the individual market in a manner that
16 ensures that the benefits and cost-sharing protections available in
17 the individual market are maintained in the same manner the
18 benefits and protections would be maintained without the waiver
19 described by Section 1511.0002.

20 Sec. 1511.0153. CONTRACTS AND AGREEMENTS. The board may
21 enter into a contract or agreement that the board determines is
22 appropriate to carry out this chapter, including a contract or
23 agreement with:

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

26 (2) another organization for the performance of
27 administrative functions; or

1 (3) a federal agency.

2 Sec. 1511.0154. RULES. The commissioner and board may
3 adopt rules necessary to implement this chapter, including rules to
4 administer the pool and distribute pool money.

5 Sec. 1511.0155. PROCEDURES, CRITERIA, AND FORMS. The board
6 by rule shall provide the procedures, criteria, and forms necessary
7 to implement, collect, and deposit assessments under Subchapter E.

8 Sec. 1511.0156. PUBLIC EDUCATION AND OUTREACH. (a) The
9 board may develop and implement public education, outreach, and
10 facilitated enrollment strategies under this chapter.

11 (b) The board may contract with marketing organizations to
12 perform or provide assistance with the strategies described by
13 Subsection (a).

14 Sec. 1511.0157. AUTHORITY TO ACT AS REINSURER. In addition
15 to the powers granted to the board under this chapter, the board may
16 exercise any authority that may be exercised under the law of this
17 state by a reinsurer.

18 SUBCHAPTER E. FUNDING

19 Sec. 1511.0201. FUNDING. The commissioner may use money
20 appropriated to the department to:

21 (1) apply for federal money and grants; and

22 (2) implement this chapter.

23 Sec. 1511.0202. ASSESSMENTS. (a) The board may assess
24 health benefit plan issuers, including making advance interim
25 assessments, as reasonable and necessary for the pool's
26 organizational and interim operating expenses.

27 (b) The board shall credit an interim assessment as an

1 offset against any regular assessment that is due after the end of
2 the fiscal year.

3 (c) The regular assessment is the amount calculated under
4 Section 1511.0204.

5 (d) The board shall deposit money from the interim and
6 regular assessments described by this section in an account
7 established outside the treasury and administered by the board.
8 Money in the account may be spent without an appropriation and may
9 be used only for purposes authorized by this chapter.

10 Sec. 1511.0203. DETERMINATION OF POOL FUNDING
11 REQUIREMENTS. After the end of each fiscal year, the board shall
12 determine for the next calendar year the amount of money required by
13 the pool to reduce enrollee premiums in accordance with this
14 chapter after applying the federal money obtained under this
15 chapter.

16 Sec. 1511.0204. ASSESSMENTS TO COVER POOL FUNDING
17 REQUIREMENTS. (a) The board shall recover an amount equal to the
18 funding required as determined under Section 1511.0203 by assessing
19 each health benefit plan issuer an amount determined annually by
20 the board based on information in annual statements, the health
21 benefit plan issuer's annual report to the board under Sections
22 1511.0251 and 1511.0252, and any other reports required by and
23 filed with the board.

24 (b) The board shall use the total number of enrolled
25 individuals reported by all health benefit plan issuers under
26 Section 1511.0252 as of the preceding December 31 to compute the
27 amount of a health benefit plan issuer's assessment, if any, in

1 accordance with this subsection. The board shall allocate the
2 total amount to be assessed based on the total number of enrolled
3 individuals covered by excess loss, stop-loss, or reinsurance
4 policies and on the total number of other enrolled individuals as
5 determined under Section 1511.0252. To compute the amount of a
6 health benefit plan issuer's assessment:

7 (1) for the issuer's enrolled individuals covered by
8 an excess loss, stop-loss, or reinsurance policy, the board shall:

9 (A) divide the allocated amount to be assessed by
10 the total number of enrolled individuals covered by excess loss,
11 stop-loss, or reinsurance policies, as determined under Section
12 1511.0252, to determine the per capita amount; and

13 (B) multiply the number of a health benefit plan
14 issuer's enrolled individuals covered by an excess loss, stop-loss,
15 or reinsurance policy, as determined under Section 1511.0252, by
16 the per capita amount to determine the amount assessed to that
17 health benefit plan issuer; and

18 (2) for the issuer's enrolled individuals not covered
19 by excess loss, stop-loss, or reinsurance policies, the board,
20 using the gross health benefit plan premiums reported for the
21 preceding calendar year by health benefit plan issuers under
22 Section 1511.0253, shall:

23 (A) divide the gross premium collected by a
24 health benefit plan issuer by the gross premium collected by all
25 health benefit plan issuers; and

26 (B) multiply the allocated amount to be assessed
27 by the fraction computed under Paragraph (A) to determine the

1 amount assessed to that health benefit plan issuer.

2 (c) A small employer health benefit plan described by
3 Chapter 1501 is not subject to an assessment under this section.

4 Sec. 1511.0205. ASSESSMENT DUE DATE; INTEREST. (a) An
5 assessment is due on the date specified by the board that is not
6 earlier than the 30th day after the date written notice of the
7 assessment is transmitted to the health benefit plan issuer.

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

13 Sec. 1511.0206. ABATEMENT OR DEFERMENT OF ASSESSMENT. (a)
14 A health benefit plan issuer may petition the board for an abatement
15 or deferment of all or part of an assessment imposed by the board.
16 The board may abate or defer all or part of the assessment if the
17 board determines that payment of the assessment would endanger the
18 ability of the health benefit plan issuer to fulfill its
19 contractual obligations.

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

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

1 Sec. 1511.0207. USE OF EXCESS FROM ASSESSMENTS. If the
2 total amount of the assessments exceeds the pool's actual losses
3 and administrative expenses, the board shall credit each health
4 benefit plan issuer with the excess in an amount proportionate to
5 the amount the health benefit plan issuer paid in assessments. The
6 credit may be paid to the health benefit plan issuer or applied to
7 future assessments under this chapter.

8 Sec. 1511.0208. COLLECTION OF ASSESSMENTS. The pool may
9 recover or collect assessments made under this subchapter.

10 SUBCHAPTER F. REPORTING

11 Sec. 1511.0251. ANNUAL ISSUER REPORT TO BOARD: REQUESTED
12 INFORMATION. Each health benefit plan issuer shall report to the
13 board the information requested by the board, as of December 31 of
14 the preceding year.

15 Sec. 1511.0252. ANNUAL ISSUER REPORT TO BOARD: ENROLLED
16 INDIVIDUALS. (a) Each health benefit plan issuer shall report to
17 the board the number of residents of this state enrolled, as of
18 December 31 of the preceding year, in the issuer's health benefit
19 plans providing coverage for residents in this state, as:

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

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

1 providing excess loss insurance, stop-loss insurance, or
2 reinsurance, as described by this subsection, for a primary health
3 benefit plan issuer may not report individuals reported by the
4 primary health benefit plan issuer.

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

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

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

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

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

20 Sec. 1511.0253. ANNUAL ISSUER REPORT TO BOARD: GROSS
21 PREMIUMS. (a) Each health benefit plan issuer shall report to the
22 board the gross premiums collected for the preceding calendar year
23 for health benefit plans.

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

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

1 (2) coverage under a small employer health benefit
2 plan subject to Chapter 1501;

3 (3) coverage:

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

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

9 (C) for credit insurance;

10 (D) only for dental or vision care; or

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

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. 1511.0254. ANNUAL BOARD REPORT OF POOL ACTIVITIES.

4 (a) Beginning June 1, 2022, not later than June 1 of each year, the
5 board shall submit a report to the governor, lieutenant governor,
6 and speaker of the house of representatives.

7 (b) The report submitted under Subsection (a) must include:

8 (1) a summary of the activities conducted under this
9 chapter in the calendar year preceding the year in which the report
10 is submitted;

11 (2) the average amount by which health benefit plan
12 premiums were reduced in this state and in each rating region;

13 (3) the average change in each rating region in the
14 amount of health benefit plan premiums paid by individuals who
15 receive a premium subsidy under the Patient Protection and
16 Affordable Care Act (Pub. L. No. 111-148); and

17 (4) an estimate of the change in each rating region in
18 enrollment in health benefit plans due to the reduction in
19 premiums.

20 SECTION 2. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2021.