

By: Johnson

S.B. No. 120

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 may:

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

(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 SUBCHAPTER B. ESTABLISHMENT AND PURPOSE

9 Sec. 1511.0051. ESTABLISHMENT OF HEALTH INSURANCE RISK
10 POOL. To the extent that federal funds are available, the
11 commissioner may:

- 12 (1) apply for the federal funds;
13 (2) use the federal funds to establish a pool for the
14 purpose of this chapter; and
15 (3) authorize the board to use the federal funds to
16 administer a pool for the purpose of this chapter.

17 Sec. 1511.0052. PURPOSE OF POOL. (a) The purpose of the
18 pool is to provide a mechanism to meaningfully reduce health
19 benefit plan premiums in the individual health benefit plan market
20 by maximizing available federal funds to assist residents of this
21 state to obtain guaranteed issue health benefit coverage.

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

26 SUBCHAPTER C. ADMINISTRATION

27 Sec. 1511.0101. BOARD OF DIRECTORS. The pool is governed by

1 a nine-member board of directors appointed by the commissioner.

2 Sec. 1511.0102. PRESIDING OFFICER. The commissioner shall
3 designate one board member to serve as presiding officer at the
4 pleasure of the commissioner.

5 Sec. 1511.0103. TERMS. Board members serve staggered
6 six-year terms.

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

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

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

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

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

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

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

1 pool that are adopted by the board.

2 (b) The plan of operation must ensure the fair, reasonable,
3 and equitable administration of the pool.

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

8 SUBCHAPTER D. POWERS AND DUTIES

9 Sec. 1511.0151. METHODS TO REDUCE PREMIUM IN INDIVIDUAL
10 MARKET. Subject to any requirements to obtain federal funds for the
11 pool, the board may use money from the pool to achieve lower
12 enrollee premium rates by providing to health benefit plan issuers
13 writing guaranteed issue coverage in the individual market:

14 (1) a reinsurance program; or

15 (2) direct funding if the health benefit plan issuer's
16 plan provides coverage for individuals described by Section
17 1511.0152.

18 Sec. 1511.0152. ACCESS TO GUARANTEED ISSUE COVERAGE. The
19 board shall use pool funds to enhance enrollment in guaranteed
20 issue coverage in the individual market in a manner that ensures
21 that the benefits and cost-sharing protections available in the
22 individual market are maintained in the same manner the benefits
23 and protections would be maintained without the waiver described by
24 Section 1511.0002.

25 Sec. 1511.0153. CONTRACTS AND AGREEMENTS. The board may
26 enter into a contract or agreement that the board determines is
27 appropriate to carry out this chapter, including a contract or

1 agreement with:

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

4 (2) another organization for the performance of
5 administrative functions; or

6 (3) a federal agency.

7 Sec. 1511.0154. RULES. The commissioner and board may
8 adopt rules necessary to implement this chapter, including rules to
9 administer the pool and distribute money from the pool.

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

13 Sec. 1511.0156. PUBLIC EDUCATION AND OUTREACH. (a) The
14 commissioner may allocate to the board funds appropriated to the
15 department for the exclusive purposes of this chapter to develop
16 and implement public education, outreach, and facilitated
17 enrollment strategies under this chapter.

18 (b) The board may contract with marketing organizations to
19 perform or provide assistance with the strategies described by
20 Subsection (a).

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

25 SUBCHAPTER E. FUNDING

26 Sec. 1511.0201. FUNDING. (a) The commissioner may use
27 funds appropriated to the department to:

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

2 (2) implement this chapter.

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

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

17 (d) Except as provided by this section, the commissioner may
18 not use any state funds to fund the pool unless the funds are
19 specifically appropriated for that purpose.

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

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

27 (c) The regular assessment is the amount determined by the

1 board under Section 1511.0203 and recovered from health benefit
2 plan issuers under Section 1511.0204.

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

9 Sec. 1511.0203. DETERMINATION OF POOL FUNDING
10 REQUIREMENTS. (a) For the first year of operation of the pool, the
11 board shall determine the amount of money required by the pool to
12 reduce the amount of premiums an enrollee would otherwise pay in
13 that year by 15 percent in accordance with this chapter after
14 applying the federal funds obtained under this chapter and funding
15 authorized by Section 1511.0201.

16 (b) After the end of each fiscal year, the board shall
17 determine for the next calendar year the amount of money required by
18 the pool to maintain a 15 percent reduction in the amount of
19 premiums an enrollee would otherwise pay in that year in accordance
20 with this chapter after applying the federal funds obtained under
21 this chapter and funding authorized by Section 1511.0201.

22 Sec. 1511.0204. ASSESSMENTS TO COVER POOL FUNDING
23 REQUIREMENTS. (a) The board shall recover an amount equal to the
24 funding required as estimated under Section 1511.0203 by assessing
25 each health benefit plan issuer an amount determined annually by
26 the board based on information in annual statements, the health
27 benefit plan issuer's annual report to the board under Sections

1 1511.0251 and 1511.0252, and any other reports required by and
2 filed with the board.

3 (b) The board shall use the total number of enrolled
4 individuals reported by all health benefit plan issuers under
5 Section 1511.0252 as of the preceding December 31 to compute the
6 amount of a health benefit plan issuer's assessment, if any, in
7 accordance with this subsection. The board shall allocate the
8 total amount to be assessed based on the total number of enrolled
9 individuals covered by excess loss, stop-loss, or reinsurance
10 policies and on the total number of other enrolled individuals as
11 determined under Section 1511.0252. To compute the amount of a
12 health benefit plan issuer's assessment:

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

15 (A) divide the allocated amount to be assessed by
16 the total number of enrolled individuals covered by excess loss,
17 stop-loss, or reinsurance policies, as determined under Section
18 1511.0252, to determine the per capita amount; and

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

24 (2) for the issuer's enrolled individuals not covered
25 by excess loss, stop-loss, or reinsurance policies, the board,
26 using the gross health benefit plan premiums reported for the
27 preceding calendar year by health benefit plan issuers under

1 Section 1511.0253, shall:

2 (A) divide the gross premium collected by a
3 health benefit plan issuer by the gross premium collected by all
4 health benefit plan issuers; and

5 (B) multiply the allocated amount to be assessed
6 by the fraction computed under Paragraph (A) to determine the
7 amount assessed to that health benefit plan issuer.

8 (c) A small employer health benefit plan subject to Chapter
9 1501 is not subject to an assessment under this section.

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

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

19 Sec. 1511.0206. ABATEMENT OR DEFERMENT OF ASSESSMENT. (a)
20 A health benefit plan issuer may petition the board for an abatement
21 or deferment of all or part of an assessment imposed by the board.
22 The board may abate or defer all or part of the assessment if the
23 board determines that payment of the assessment would endanger the
24 ability of the health benefit plan issuer to fulfill its
25 contractual obligations.

26 (b) If all or part of an assessment against a health benefit
27 plan issuer is abated or deferred, the amount of the abatement or

1 deferment shall be assessed against the other health benefit plan
2 issuers in a manner consistent with the method for computing
3 assessments under this chapter.

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

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

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

16 SUBCHAPTER F. REPORTING

17 Sec. 1511.0251. ANNUAL ISSUER REPORT TO BOARD: REQUESTED
18 INFORMATION. Each health benefit plan issuer shall report to the
19 board the information requested by the board, as of December 31 of
20 the preceding year.

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

26 (1) an employee under a group health benefit plan; or

27 (2) an individual policyholder or subscriber.

1 (b) In determining the number of individuals to report under
2 Subsection (a)(1), the health benefit plan issuer shall include
3 each employee for whom a premium is paid and coverage is provided
4 under an excess loss, stop-loss, or reinsurance policy issued by
5 the issuer to an employer or group health benefit plan providing
6 coverage for employees in this state. A health benefit plan issuer
7 providing excess loss insurance, stop-loss insurance, or
8 reinsurance, as described by this subsection, for a primary health
9 benefit plan issuer may not report individuals reported by the
10 primary health benefit plan issuer.

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

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

17 (1) the dependents of the employee or an individual
18 policyholder or subscriber; and

19 (2) individuals who are covered by the health benefit
20 plan issuer under a Medicare supplement benefit plan subject to
21 Chapter 1652.

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

26 Sec. 1511.0253. ANNUAL ISSUER REPORT TO BOARD: GROSS
27 PREMIUMS. (a) Each health benefit plan issuer shall report to the

1 board the gross premiums collected for the preceding calendar year
2 for health benefit plans.

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

5 (1) coverage under a Medicare supplement benefit plan
6 subject to Chapter 1652;

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

9 (3) coverage:

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

13 (B) as a supplement to a liability insurance
14 policy;

15 (C) for credit insurance;

16 (D) only for dental or vision care;

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

18 (F) only for indemnity for hospital confinement;

19 (G) only for accident; or

20 (H) only for fixed indemnity;

21 (4) a workers' compensation insurance policy;

22 (5) medical payment insurance coverage provided under
23 a motor vehicle insurance policy;

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

27 (7) liability insurance coverage, including general

1 liability insurance and automobile liability insurance;
2 (8) coverage for on-site medical clinics;
3 (9) insurance coverage under which benefits are
4 payable with or without regard to fault and that is statutorily
5 required to be contained in a liability insurance policy or
6 equivalent self-insurance; or
7 (10) other similar insurance coverage, as specified by
8 federal regulations issued under the Health Insurance Portability
9 and Accountability Act of 1996 (Pub. L. No. 104-191), under which
10 benefits for medical care are secondary or incidental to other
11 insurance benefits.

12 Sec. 1511.0254. ANNUAL BOARD REPORT OF POOL ACTIVITIES.
13 (a) Beginning June 1, 2022, not later than June 1 of each year, the
14 board shall submit a report to the governor, lieutenant governor,
15 and speaker of the house of representatives.

16 (b) The report submitted under Subsection (a) must
17 summarize the activities conducted under this chapter in the
18 calendar year preceding the year in which the report is submitted.

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

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2021.