

By: Johnson

S.B. No. 1807

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Texas Health Insurance Exchange and an exchange reinsurance program.

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. TEXAS HEALTH INSURANCE EXCHANGE AND REINSURANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1511.001. DEFINITIONS. In this chapter:

(1) "Attachment point" means the threshold amount of claim costs that an eligible health benefit plan issuer must incur for an enrollee's covered benefits during a plan year above which the claim costs for benefits are eligible for reinsurance payments under the reinsurance program.

(2) "Board" means the board of directors of the Texas Health Insurance Exchange Authority.

(3) "Coinsurance rate" means the percentage rate at which the reinsurance program reimburses an eligible health benefit plan issuer for claim costs incurred above the attachment point and below the reinsurance cap for an enrollee's covered benefits during a plan year.

(4) "Eligible health benefit plan issuer" means a health benefit plan issuer offering health benefit plans eligible

1 for the reinsurance program to individuals in this state.

2 (5) "Enrollee" means an individual who is enrolled in
3 a qualified health plan.

4 (6) "Exchange" means the Texas Health Insurance
5 Exchange established under this chapter.

6 (7) "Exchange assister" means an individual or
7 organization, including a navigator, who provides public education
8 or assists consumers on behalf of the exchange. The term does not
9 include a licensed insurance agent.

10 (8) "Exchange authority" means the Texas Health
11 Insurance Exchange Authority established under this chapter.

12 (9) "Exchange fund" means the exchange revolving fund
13 established under Section 1511.251.

14 (10) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 (11) "Navigator" means an individual or entity
17 performing the activities and duties of a navigator as described by
18 42 U.S.C. Section 18031 or any regulation enacted under that
19 section.

20 (12) "Plan year" means the calendar year during which
21 an eligible health benefit plan issuer provides coverage through a
22 health benefit plan.

23 (13) "Qualified health plan" has the meaning assigned
24 by Section 1301(a), Patient Protection and Affordable Care Act (42
25 U.S.C. Section 18021).

26 (14) "Reinsurance cap" means the maximum amount of
27 claim costs incurred by an eligible health benefit plan issuer for

1 an enrollee's covered benefits during a plan year above which the
2 claim costs are no longer eligible for reinsurance payments under
3 the reinsurance program.

4 (15) "Reinsurance fund" means the reinsurance program
5 revolving fund established under Section 1511.316.

6 (16) "Reinsurance payment" means an amount paid to an
7 eligible health benefit plan issuer under the reinsurance program.

8 (17) "Reinsurance program" means the exchange
9 reinsurance program established under this chapter.

10 Sec. 1511.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In
11 this chapter, "health benefit plan" means an insurance policy,
12 insurance agreement, evidence of coverage, or other similar
13 coverage document that provides coverage for medical or surgical
14 expenses incurred as a result of a health condition, accident, or
15 sickness that is issued by:

16 (1) an insurance company;

17 (2) a group hospital service corporation operating
18 under Chapter 842;

19 (3) a health maintenance organization operating under
20 Chapter 843;

21 (4) an approved nonprofit health corporation that
22 holds a certificate of authority under Chapter 844;

23 (5) a multiple employer welfare arrangement that holds
24 a certificate of authority under Chapter 846;

25 (6) a stipulated premium company operating under
26 Chapter 884;

27 (7) a fraternal benefit society operating under

1 Chapter 885; or

2 (8) an exchange operating under Chapter 942.

3 (b) In this chapter, "health benefit plan" does not include:

4 (1) a plan that provides coverage:

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

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

10 (C) for credit insurance;

11 (D) only for vision care;

12 (E) only for hospital expenses; or

13 (F) only for indemnity for hospital confinement;

14 (2) a Medicare supplemental policy as defined by
15 Section 1882(g)(1), Social Security Act (42 U.S.C. Section
16 1395ss(g)(1));

17 (3) a workers' compensation insurance policy;

18 (4) medical payment insurance coverage provided under
19 a motor vehicle insurance policy; or

20 (5) an individual health benefit plan issued on or
21 before March 23, 2010, that has not had any significant changes
22 since that date that reduce benefits or increase costs to the
23 individual.

24 Sec. 1511.003. RULEMAKING AUTHORITY. The department and
25 the board may adopt rules necessary and proper to implement this
26 chapter. Rules adopted under this section may not conflict with or
27 prevent the application of regulations promulgated by the United

1 States secretary of health and human services under the Patient
2 Protection and Affordable Care Act (Pub. L. No. 111-148).

3 Sec. 1511.004. AGENCY COOPERATION. (a) The exchange
4 authority, the department, and the Health and Human Services
5 Commission shall cooperate fully in performing their respective
6 duties under this code or another law of this state relating to the
7 operation of the exchange.

8 (b) The exchange authority and the Health and Human Services
9 Commission shall cooperate fully to:

10 (1) ensure that the development of eligibility and
11 enrollment systems for the exchange and related premium tax credits
12 are fully integrated with the planning and development of the
13 Health and Human Services Commission's eligibility systems
14 modernization efforts;

15 (2) ensure full and seamless interoperability and
16 minimize duplication of cost and effort;

17 (3) develop and administer transition procedures
18 that:

19 (A) address the needs of individuals and families
20 who experience a change in income that results in a change in the
21 source of coverage, with a particular emphasis on children and
22 adults with special health care needs and chronic illnesses,
23 conditions, and disabilities, as well as all individuals who are
24 also enrolled in Medicare; and

25 (B) to the extent practicable under the Patient
26 Protection and Affordable Care Act (Pub. L. No. 111-148), provide
27 for the coordination of payments to Medicaid managed care

1 organizations and qualified health plans that experience changes in
2 enrollment resulting from changes in eligibility for Medicaid
3 during an enrollment period;

4 (4) ensure consistent methods and standards,
5 including formulas and verification methods, for prompt
6 calculation of income based on individuals' modified adjusted gross
7 incomes in order to guard against lapses in coverage and
8 inconsistent eligibility determinations and procedures;

9 (5) ensure maximum access to federal data sources for
10 the purpose of verifying income eligibility for Medicaid, the state
11 child health plan program, premium tax credits, and cost-sharing
12 reductions;

13 (6) ensure the prompt processing of applications and
14 enrollment in the correct state subsidy program, regardless of
15 whether the program is Medicaid, the state child health plan
16 program, premium tax credits, or cost-sharing reductions;

17 (7) ensure procedures for transitioning individuals
18 between Medicaid and tax-credit-based subsidies that protect
19 individuals against delays in eligibility and plan enrollment; and

20 (8) ensure rapid resolution of inconsistent
21 information affecting eligibility and dissemination of clear and
22 understandable information to applicants regarding the resolution
23 process and any interim assistance that may be available while
24 resolution is pending.

25 Sec. 1511.005. CONFIDENTIALITY OF RECORDS. (a) Except as
26 otherwise provided by this chapter, documents, materials, or other
27 information, including a disclosure, in the possession or control

1 of the department or the exchange authority that is obtained by,
2 created by, or disclosed to the commissioner or any other person
3 under this chapter is confidential and privileged and is:

4 (1) not subject to disclosure under Chapter 552,
5 Government Code;

6 (2) not subject to subpoena; and

7 (3) not subject to discovery or admissible in evidence
8 in any private civil action.

9 (b) Except as otherwise provided by this chapter,
10 documents, materials, or other information, including a
11 disclosure, in the possession or control of the department or the
12 exchange authority that is obtained by, created by, or disclosed to
13 the commissioner or any other person under this chapter is
14 recognized by this state as being proprietary and to contain trade
15 secrets.

16 Sec. 1511.006. PERSONAL HEALTH AND FINANCIAL INFORMATION
17 CONFIDENTIAL. The department and the exchange authority shall
18 protect all personally identifiable health and financial
19 information in accordance with all applicable federal and state
20 laws, including the Patient Protection and Affordable Care Act
21 (Pub. L. No. 111-148), the Health Insurance Portability and
22 Accountability Act of 1996 (Pub. L. No. 104-191), and the Health
23 Information Technology for Economic and Clinical Health Act (Pub.
24 L. No. 111-5), enacted under the American Recovery and Reinvestment
25 Act of 2009 (Pub. L. No. 111-5), and any regulations promulgated
26 under those laws.

27 Sec. 1511.007. INFORMATION SHARING AND CONFIDENTIALITY.

1 (a) The department or the exchange authority may enter into
2 information-sharing agreements with each other to carry out the
3 department's or exchange authority's responsibilities under this
4 chapter or with:

5 (1) federal and state agencies; and

6 (2) an eligible health benefit plan issuer.

7 (b) An agreement entered into under this section must
8 include adequate protection with respect to the confidentiality of
9 any information shared and comply with all applicable state and
10 federal law.

11 Sec. 1511.008. IMMUNITY. The following persons are not
12 liable, and a cause of action does not arise against any of the
13 following persons, for a good faith act or omission in exercising
14 powers and performing duties under this chapter:

15 (1) the board, the department, or the exchange
16 authority;

17 (2) a board member or member of the advisory committee
18 established in Section 1511.152; or

19 (3) an officer or employee of an entity listed in
20 Subdivision (1).

21 Sec. 1511.009. COMPLIANCE WITH FEDERAL LAW. The exchange
22 authority and the reinsurance program shall comply with all
23 applicable federal law and regulations, including all federal
24 reporting requirements.

25 Sec. 1511.010. NO ENTITLEMENT. Nothing in this chapter
26 constitutes an entitlement or a claim on any money of the state.

27 Sec. 1511.011. EXPIRATION OF CHAPTER. If any provision of

1 the Patient Protection and Affordable Care Act (Pub. L.
2 No. 111-148), as amended by the Health Care and Education
3 Reconciliation Act of 2010 (Pub. L. No. 111-152), integral to the
4 operation of the exchange authority or reinsurance program
5 established under this chapter is repealed, defunded, or
6 invalidated, the commissioner shall notify the exchange authority
7 or the department to initiate steps to cease operations of the
8 exchange or reinsurance program and to cease operations not later
9 than 15 months after notification is received under this section.

10 SUBCHAPTER B. EXCHANGE ESTABLISHMENT AND PURPOSE

11 Sec. 1511.051. EXCHANGE AUTHORITY ESTABLISHED. This
12 chapter establishes the Texas Health Insurance Exchange Authority
13 to implement the Texas Health Insurance Exchange as an American
14 Health Benefit Exchange authorized by Section 1311, Patient
15 Protection and Affordable Care Act (42 U.S.C. Section 18031).

16 Sec. 1511.052. PURPOSE. The purpose of the exchange
17 authority is to create, manage, and maintain the exchange in order
18 to:

19 (1) benefit the state health insurance market and
20 individuals enrolling in health benefit plans;

21 (2) facilitate or assist in facilitating the
22 purchasing of qualified health plans on the exchange by qualified
23 enrollees in the individual market or the individual and small
24 group markets; and

25 (3) reduce or eliminate barriers to enrollment in
26 qualified health plans offered on the exchange by:

27 (A) simplifying the process to resolve data

1 matching issues;

2 (B) reducing circumstances under which
3 documentation must be submitted;

4 (C) simplifying the process for consumers to
5 submit documentation;

6 (D) streamlining special enrollment periods; and

7 (E) making the Internet website for the exchange
8 more user-friendly and mobile-friendly.

9 SUBCHAPTER C. GOVERNANCE OF EXCHANGE

10 Sec. 1511.101. GOVERNANCE OF EXCHANGE AUTHORITY; BOARD
11 MEMBERSHIP. The exchange authority is governed by a board of nine
12 directors, with the advice and consent of the senate, as follows:

13 (1) seven members appointed by the governor:

14 (A) four of whom are health benefit plan issuers
15 that offer health benefit plans through the exchange;

16 (B) two of whom are individuals with experience
17 in health care public education and consumer assistance activities
18 who do not have a conflict of interest as provided by Section
19 1511.106; and

20 (C) one of whom is a consumer advocate;

21 (2) the commissioner, or the commissioner's designee,
22 as an ex officio voting member; and

23 (3) the executive commissioner, or the executive
24 commissioner's designee, as an ex officio voting member.

25 Sec. 1511.102. PRESIDING OFFICER. The commissioner, or the
26 commissioner's designee, shall serve as the presiding officer.

27 Sec. 1511.103. TERMS; VACANCY. (a) Appointed members of

1 the board serve six-year staggered terms, with two or three of the
2 members' terms expiring February 1 of each odd-numbered year.

3 (b) The governor shall fill a vacancy on the board by
4 appointing, for the unexpired term, an individual who has the
5 appropriate qualifications to fill that position.

6 Sec. 1511.104. MEETINGS; QUORUM. (a) The board shall meet
7 at the call of the presiding officer or as provided in the bylaws of
8 the board, but not less frequently than quarterly.

9 (b) A majority of the appointed members of the board
10 constitutes a quorum. If a quorum is present, the board by majority
11 vote may act on any matter within the board's jurisdiction.

12 (c) Meetings of the board are subject to Chapter 551,
13 Government Code.

14 Sec. 1511.105. BOARD MEMBER COMPENSATION. (a) A board
15 member may not receive compensation but is entitled to
16 reimbursement of the travel expenses incurred by the board member
17 while conducting board business, subject to the availability of
18 money.

19 (b) Reimbursement under Subsection (a) shall be paid from
20 the exchange fund.

21 Sec. 1511.106. CONFLICTS OF INTEREST; RELEVANT EXPERIENCE.
22 The board shall ensure compliance with the standards described by
23 42 U.S.C. Section 18041 and all applicable federal regulations
24 promulgated under the Patient Protection and Affordable Care Act
25 (Pub. L. No. 111-148) regarding conflicts of interest and relevant
26 experience.

1 SUBCHAPTER D. POWERS AND DUTIES OF EXCHANGE

2 Sec. 1511.151. EMPLOYEES; COMMITTEES. (a) The board may
3 employ an executive director and any other agents and employees
4 that the board considers necessary to assist the exchange authority
5 in carrying out its responsibilities and functions. An employee of
6 the exchange authority is a state employee.

7 (b) The executive director shall organize, administer, and
8 manage the operations of the exchange authority. The executive
9 director may hire other employees as necessary to carry out the
10 responsibilities of the exchange authority.

11 (c) The executive director shall attend all meetings of the
12 board, but is not a member of the board, and may not vote or be
13 counted for purposes of establishing a quorum.

14 (d) The exchange authority may appoint appropriate legal,
15 actuarial, and other committees necessary to provide technical
16 assistance in operating the exchange and performing any of the
17 functions of the exchange or exchange authority.

18 Sec. 1511.152. ADVISORY COMMITTEE. (a) An advisory
19 committee is established to advise the board on:

- 20 (1) initial operational decisions;
21 (2) ongoing financing decisions; and
22 (3) any other decisions considered appropriate by the
23 board.

24 (b) The advisory committee is composed of eight members
25 appointed or selected as follows:

- 26 (1) four consumer representatives, including:
27 (A) two persons appointed by the governor, one of

1 whom must be a registered insurance exchange navigator or assister;

2 (B) one person appointed by the speaker of the
3 house of representatives; and

4 (C) one person appointed by the lieutenant
5 governor;

6 (2) one representative selected by the Texas Hospital
7 Association;

8 (3) one representative selected by the Texas Medical
9 Association;

10 (4) one representative selected by the Texas Chamber
11 of Commerce Executives from a small employer, as that term is
12 defined by Section 1501.002; and

13 (5) one representative selected by the Texas
14 Association of Health Underwriters.

15 (c) Advisory committee members serve staggered four-year
16 terms, with two of the members' terms expiring February 1 of each
17 odd-numbered year. A member may be reappointed for a second term.
18 If a vacancy occurs on the committee, the appropriate appointing
19 authority shall appoint a successor, in the same manner as the
20 original appointment, to serve for the remainder of the unexpired
21 term.

22 (d) A majority of the members of the advisory committee
23 constitutes a quorum. If a quorum is present, the advisory
24 committee by majority vote may act on any matter within the
25 committee's jurisdiction.

26 (e) The advisory committee shall meet at least twice per
27 year, with each meeting being held before a meeting of the board.

1 Additional meetings may be held on reasonable notice of the time and
2 location of the meeting selected by the board. The advisory
3 committee shall meet at the call of the presiding officer or on
4 written request of three members of the committee. A meeting of the
5 committee is subject to Chapter 551, Government Code.

6 (f) The executive director of the exchange authority, or the
7 executive director's designee, shall attend each meeting of the
8 advisory committee.

9 (g) The members of the advisory committee shall determine
10 the dates of each meeting by majority vote or by the call of the
11 presiding officer on seven days' notice to all members.

12 (h) The advisory committee must post a notice, including the
13 date, time, and place, of a committee meeting on the exchange
14 authority's Internet website not less than five days before each
15 meeting. The notice must state that the meeting is open to the
16 public. All actions taken by the committee must be taken in open
17 session and on a majority vote of the members present.

18 (i) A member of the advisory committee may not receive
19 compensation but is entitled to reimbursement of the travel
20 expenses incurred by the member while conducting committee
21 business, subject to the availability of money. Reimbursement
22 under this subsection shall be paid from the exchange fund.

23 Sec. 1511.153. ADMINISTRATIVE POWERS AND DUTIES OF EXCHANGE
24 AUTHORITY. (a) The exchange authority shall exercise all powers
25 and duties necessary and appropriate to carry out the authority's
26 purpose, including:

27 (1) adopting bylaws;

- 1 (2) employing staff;
- 2 (3) making, executing, and delivering contracts;
- 3 (4) applying for, soliciting, and receiving money from
4 any source consistent with the purposes of this chapter;
- 5 (5) establishing priorities for and allocating and
6 distributing money received by the exchange authority;
- 7 (6) submitting the exchange authority's budget
8 annually and the exchange authority's budget request, including
9 amounts to be appropriated out of the exchange fund necessary to
10 administer the provisions of this chapter and the transfer of money
11 to the reinsurance fund, biennially to the governor and the chairs
12 of the standing committees of the senate and house of
13 representatives with primary jurisdiction over appropriations;
- 14 (7) establishing travel reimbursement policies for
15 the exchange authority, the board, and the advisory committee;
- 16 (8) coordinating with the appropriate federal and
17 state agencies to seek waivers from statutory or regulatory
18 requirements as necessary to carry out the purposes of this
19 chapter;
- 20 (9) entering into other arrangements, including
21 interagency agreements with federal agencies and state agencies, as
22 necessary;
- 23 (10) giving reasonable public notice of any policies
24 and procedures the exchange authority may implement to operate the
25 exchange authority;
- 26 (11) ensuring that there is a sufficient number of
27 navigators and exchange assisters by awarding grants to navigators

1 and exchange assisters at a yearly average number that exceeds the
2 yearly average number of grants awarded from 2013 through 2016;

3 (12) providing centralized training, support, and
4 technical assistance for navigators and exchange assisters;

5 (13) spending money on marketing and advertisements
6 for the exchange in an amount that exceeds the amount of money spent
7 in this state annually on marketing and advertisements in relation
8 to the federally facilitated marketplace from 2013 to 2016;

9 (14) coordinating innovative marketing and outreach
10 campaigns, including by working with and supporting local
11 enrollment coalitions, agents, and stakeholders;

12 (15) ensuring a sufficient amount of money is spent on
13 customer support services, including call centers, web support, and
14 navigator and agent support, to provide high-quality services,
15 including by:

16 (A) creating a special team with knowledge and
17 authority to resolve difficult eligibility and enrollment
18 challenges;

19 (B) ensuring call center staff are able to access
20 and share information specific to a consumer's application;

21 (C) investing in services and systems to improve
22 information for consumers with limited English proficiency;

23 (D) making the exchange Internet website and
24 application process mobile-friendly; and

25 (E) ensuring consumers can easily submit
26 documentation, when needed; and

27 (16) performing any other operational activities

1 necessary or appropriate under this chapter.

2 (b) The board must consider the advice of the advisory
3 committee established under Section 1511.152.

4 Sec. 1511.154. FUNCTIONS OF THE EXCHANGE AUTHORITY. (a) In
5 carrying out the purposes of this chapter, the exchange authority
6 shall:

7 (1) educate consumers, including through outreach, a
8 navigator program, and post-enrollment support;

9 (2) assist individuals in accessing income-based
10 assistance for which the individual may be eligible, including
11 premium tax credits, cost-sharing reductions, and government
12 programs;

13 (3) consider the need for consumer choice in rural,
14 urban, and suburban areas of the state;

15 (4) negotiate premium rates with health benefit plan
16 issuers on the exchange;

17 (5) contract selectively with health benefit plan
18 issuers to drive value and promote improvement in the delivery
19 system;

20 (6) standardize health benefit plan designs and
21 cost-sharing;

22 (7) leverage quality improvement and delivery system
23 reforms by encouraging participating health benefit plans to
24 implement strategies to promote the delivery of better coordinated,
25 more efficient health care services;

26 (8) align with other large purchasers of health
27 benefit plans, including the state Medicaid program, the child

1 health plan program under Chapter 62, Health and Safety Code, the
2 Teacher Retirement System of Texas, and the Employees Retirement
3 System of Texas, to send consistent purchasing signals to health
4 benefit plan issuers and providers;

5 (9) recruit new health benefit plan issuers to areas
6 with less competition;

7 (10) leverage consumer decision-making through better
8 information and web-based decision-making tools;

9 (11) subject to Subsection (b), assess and collect
10 fees from health benefit plan issuers on the exchange to support the
11 operation of the exchange and the reinsurance program under this
12 chapter; and

13 (12) distribute collected fees, including to benefit
14 the reinsurance program.

15 (b) The exchange authority may not assess or collect any
16 costs or fees under Subsection (a)(11) other than an exchange user
17 fee on total monthly premiums for health benefit plans on the
18 exchange. The fee may not exceed three percent unless approved by
19 unanimous consent of the board, and in no circumstance may the fee
20 exceed 3.5 percent. The exchange authority shall set aside a
21 percentage of the exchange user fee to increase subsidies for
22 health benefit plans.

23 Sec. 1511.155. ENFORCEMENT AND STATE SOVEREIGNTY. The
24 exchange authority shall ensure that the exchange complies with the
25 Patient Protection and Affordable Care Act (Pub. L. No. 111-148)
26 and its subsequent amendments and any federal regulations
27 promulgated under that act in a manner that maintains state

1 sovereignty over the health insurance market in this state.
2 Enforcement responsibilities shall be delegated to the appropriate
3 state agencies and must be sufficient to prevent a determination by
4 the United States secretary of health and human services that the
5 state has failed to substantially enforce any provision of the
6 Patient Protection and Affordable Care Act.

7 SUBCHAPTER E. REPORTING REQUIREMENTS FOR EXCHANGE AUTHORITY

8 Sec. 1511.201. ANNUAL AUDIT. (a) The exchange authority
9 shall have an examination and audit of the exchange authority
10 conducted annually by an independent certified public accounting
11 firm. The audit must:

12 (1) assess compliance with the requirements of this
13 chapter; and

14 (2) identify any material weaknesses or significant
15 deficiencies and identify and implement solutions to correct those
16 weaknesses or deficiencies.

17 (b) Not later than December 31 of each year, the exchange
18 authority shall:

19 (1) post on the exchange authority's Internet website:

20 (A) the audit for the preceding year; and

21 (B) a summary of the audit, including any
22 identified material weaknesses or significant deficiencies and the
23 department's proposed solution for those weaknesses or
24 deficiencies; and

25 (2) provide to the secretary of the senate and the
26 chief clerk of the house of representatives and the department an
27 electronic link to the web page on which the audit information in

1 Subdivision (1) is posted.

2 (c) The exchange authority shall pay for the cost of the
3 annual audit under Subsection (a) with money from the exchange
4 fund.

5 Sec. 1511.202. ANNUAL REPORTS. (a) The exchange authority
6 shall prepare an annual report regarding the activities of the
7 exchange authority for the preceding year.

8 (b) The exchange authority shall:

9 (1) electronically submit the report required under
10 this section to the governor, the lieutenant governor, the speaker
11 of the house of representatives, and the chairs of the standing
12 committees of the senate and house of representatives with primary
13 jurisdiction over appropriations and insurance;

14 (2) post the report on the exchange authority's
15 Internet website; and

16 (3) provide a copy of the electronic link to the posted
17 report under Subdivision (2) to the department.

18 SUBCHAPTER F. EXCHANGE FUND

19 Sec. 1511.251. EXCHANGE FUND. (a) The exchange fund is
20 established as a revolving fund in the state treasury outside the
21 general revenue fund.

22 (b) The exchange authority may deposit assessments, gifts
23 or donations, and any federal funding obtained by the exchange
24 authority in the exchange fund in accordance with procedures
25 established by the comptroller.

26 (c) The exchange fund shall be administered by the exchange
27 authority for the purposes of the exchange established under this

1 chapter, including the deposit of federal money available for the
2 exchange and all other money received under or distributed in
3 accordance with this subchapter.

4 (d) Interest or other income from the investment of the
5 exchange fund shall be deposited to the credit of the fund.

6 SUBCHAPTER G. REINSURANCE PROGRAM

7 Sec. 1511.301. APPLICATION FOR STATE INNOVATION WAIVER.

8 (a) The department shall apply to the United States secretary of
9 health and human services to obtain a waiver under 42 U.S.C. Section
10 18052 to:

11 (1) waive any applicable provisions of the Patient
12 Protection and Affordable Care Act (Pub. L. No. 111-148) with
13 respect to health benefit plan coverage in this state;

14 (2) establish a reinsurance program in accordance with
15 an approved waiver; and

16 (3) maximize federal funding for the reinsurance
17 program for plan years beginning on or after the effective date of
18 the implementation of the program.

19 (b) The department may amend the waiver application as
20 necessary to carry out the provisions of this chapter.

21 (c) The department shall promptly notify the chairs of the
22 standing committees of the senate and house of representatives with
23 primary jurisdiction over appropriations and insurance of any
24 amendment to the waiver application and any federal actions taken
25 regarding the application.

26 (d) Not later than February 1, 2022, the department shall
27 make a draft of the application for the waiver under Subsection (a)

1 available for a public review and comment period of not less than 30
2 days. The department shall consider any comments in submitting the
3 final application. This subsection expires September 1, 2022.

4 Sec. 1511.302. IMPLEMENTATION OF WAIVER AND ESTABLISHMENT
5 OF REINSURANCE PROGRAM. (a) On approval by the United States
6 secretary of health and human services of the department's
7 application for a waiver under Section 1511.301, the department
8 shall establish and implement a reinsurance program for the
9 purposes of:

10 (1) stabilizing rates and premiums for health benefit
11 plans in the individual market; and

12 (2) providing greater financial certainty to
13 consumers of health benefit plans in this state.

14 (b) The reinsurance program under this subchapter is
15 considered to be a reinsurance entity for carrying out a
16 reinsurance program under the Patient Protection and Affordable
17 Care Act (Pub. L. No. 111-148) and its subsequent amendments.

18 Sec. 1511.303. OPERATION OF REINSURANCE PROGRAM. (a) The
19 department shall perform all appropriate and necessary functions to
20 operate the reinsurance program and effectuate the purposes for
21 which the reinsurance program was established in accordance with
22 the approved waiver under Section 1511.301. The functions may
23 include:

24 (1) establishing procedures for and performing
25 administrative and accounting operations of the reinsurance
26 program;

27 (2) seeking and receiving funding and maximizing

1 federal funding for the reinsurance program, including funding
2 from:

3 (A) the exchange authority;

4 (B) federal funding that is or may become
5 available to states to support the administration and
6 implementation of state-based reinsurance programs; and

7 (C) any other available sources;

8 (3) collecting data submissions and reinsurance
9 payment requests from eligible health benefit plan issuers;

10 (4) making reinsurance payments to eligible health
11 benefit plan issuers;

12 (5) resolving disputes related to the amount of
13 reinsurance payments;

14 (6) suing or being sued, including taking any legal
15 action necessary or proper to recover money for reinsurance
16 payments; and

17 (7) submitting invoices or other requests for money as
18 necessary or appropriate under the waiver.

19 (b) Except as prohibited under applicable federal law or
20 regulations, the department may, as may be necessary or appropriate
21 to carry out department duties, administer the reinsurance program
22 directly or through:

23 (1) a federal agency, an agency of another state, or
24 another state agency; or

25 (2) a contracted person or entity, including with a
26 legal, actuarial, or economic third-party administrator or other
27 person or entity, as the department determines appropriate, to

1 provide consultation services and technical assistance.

2 (c) A contracted person or entity under Subsection (b)(2)
3 shall submit regular reports to the department regarding the
4 person's or entity's performance, in the form and manner prescribed
5 by the department.

6 Sec. 1511.304. COORDINATION WITH EXCHANGE AUTHORITY. The
7 department shall coordinate with the exchange authority as
8 necessary to fund and operate the reinsurance program.

9 Sec. 1511.305. REINSURANCE PROGRAM TERMS. (a) After
10 consultation with all health benefit plan issuers participating in
11 the exchange, but not less than 60 days before the date on which
12 final rate filings for health benefit plans are required to be
13 submitted each year under Section 1511.309, the department shall
14 determine and adopt the attachment point, reinsurance cap, and
15 coinsurance rate applicable to the reinsurance program for the
16 following year.

17 (b) In determining the attachment point, reinsurance cap,
18 and coinsurance rate under Subsection (a), the department shall
19 seek to:

20 (1) manage the program within the total amount of
21 funding available to the department for the reinsurance program;
22 and

23 (2) with respect to the individual market:

24 (A) mitigate the impact of high-cost claims on
25 premium rates;

26 (B) stabilize or reduce premium rates; and

27 (C) increase participation in the market.

1 (c) The department shall, with respect to the adopted
2 attachment point, reinsurance cap, and coinsurance rate:

3 (1) publish notice of the terms:

4 (A) in the Texas Register; and

5 (B) on the department's Internet website; and

6 (2) electronically send notice of the terms to:

7 (A) the chairs of the standing committees of the
8 senate and house of representatives with primary jurisdiction over
9 appropriations and insurance; and

10 (B) each participating health benefit plan
11 issuer through a contact person or by e-mail, as identified by the
12 plan issuer.

13 (d) Not later than 10 business days after publication of
14 notice in the Texas Register, a health benefit plan issuer may
15 challenge and request a review of the department's determination of
16 the attachment point, reinsurance cap, and coinsurance rate.

17 (e) After the department has adopted the attachment point,
18 reinsurance cap, and coinsurance rate under Subsection (a), the
19 department may not, before or during the plan year for which those
20 terms are in effect, change the attachment point, reinsurance cap,
21 or coinsurance rate in a manner that is less favorable to the health
22 benefit plan issuers participating in the exchange at the time of
23 adoption.

24 Sec. 1511.306. REINSURANCE PAYMENTS. (a) A health benefit
25 plan issuer is eligible for a reinsurance payment if:

26 (1) the claims costs for an enrollee's covered
27 benefits during a plan year exceed the attachment point;

1 (2) the eligible health benefit plan issuer has
2 implemented and documented reasonable care management practices
3 for enrollees who are the subject of reinsurance claims through the
4 reinsurance program;

5 (3) the eligible health benefit plan issuer makes a
6 request for reinsurance payments in accordance with any
7 requirements established by the department, including requirements
8 regarding the format, structure, and timing for submission of
9 claims for reinsurance payments; and

10 (4) the eligible health benefit plan issuer
11 participated in the exchange, or is affiliated with an entity that
12 participated in the exchange, during the plan year in which the
13 claims costs for which a reinsurance payment is requested were
14 incurred.

15 (b) In calculating reinsurance payments due to a health
16 benefit plan issuer, the department must deduct from the relevant
17 claim costs all other available insurance payments applicable to a
18 claim, including insurance accessible through subrogation or
19 coordination of benefits.

20 (c) Payments to health benefit plan issuers must be
21 calculated and made on a pro rata basis.

22 Sec. 1511.307. REPORTING TO DEPARTMENT. A health benefit
23 plan issuer that requests a reinsurance payment under this chapter
24 must report to the department, in the form and manner prescribed by
25 the department, any information regarding enrollees covered by the
26 health benefit plan issuer necessary for the department to
27 calculate reinsurance payments.

1 Sec. 1511.308. REINSURANCE PAYMENT CLAIMS CONFIDENTIAL. A
2 claim for a reinsurance payment under this subchapter is
3 confidential and not subject to disclosure under Chapter 552,
4 Government Code.

5 Sec. 1511.309. EXCHANGE RATE FILINGS. A health benefit
6 plan issuer must identify and include the impact of reinsurance
7 payments under this subchapter in an annual rate filing for a health
8 benefit plan to be offered through the exchange. The rate filing
9 shall be submitted in the time and in the form and manner required
10 by the department.

11 Sec. 1511.310. RULES. The department may adopt any
12 necessary and appropriate rules to establish processes for the
13 settlement of reinsurance coverage claims and disbursement of
14 reinsurance payments.

15 Sec. 1511.311. REVIEW OF REINSURANCE PAYMENTS. A health
16 benefit plan issuer may request an administrative review of the
17 department's determination regarding the amount of a reinsurance
18 payment due to the issuer.

19 Sec. 1511.312. REINSURANCE PAYMENTS FROM FEDERAL MONEY.
20 Notwithstanding any other provision of this subchapter, the
21 department is not required to pay a reinsurance payment that would
22 be payable with federal money if the federal government does not
23 provide sufficient money for the reinsurance fund to fully
24 reimburse the amount of the reinsurance payment.

25 Sec. 1511.313. ANNUAL AUDIT. (a) The department shall have
26 an examination and audit of the reinsurance program conducted
27 annually by an independent certified public accounting firm. The

1 audit must:

2 (1) assess compliance with the requirements of this
3 subchapter; and

4 (2) identify any material weaknesses or significant
5 deficiencies and identify and implement solutions to correct those
6 weaknesses or deficiencies.

7 (b) Not later than December 31 of each year, the department
8 shall:

9 (1) post on the department's Internet website:

10 (A) the audit for the preceding year; and

11 (B) a summary of the audit, including any
12 identified material weaknesses or significant deficiencies and the
13 department's proposed solution for those weaknesses or
14 deficiencies; and

15 (2) provide to the secretary of the senate and the
16 chief clerk of the house of representatives an electronic link to
17 the web page on which the audit information in Subdivision (1) is
18 posted.

19 (c) The department shall pay for the cost of the annual
20 examination and audit under Subsection (a) with money from the
21 reinsurance fund.

22 Sec. 1511.314. ANNUAL REPORTS. (a) Not later than November
23 1 of the year following a plan year or 60 days after the final
24 distribution of reinsurance payments for the applicable plan year,
25 whichever is later, the department shall prepare a financial report
26 regarding the previous plan year. The report must include:

27 (1) the amount of money deposited into the reinsurance

1 fund;

2 (2) requests for reinsurance payments received from
3 eligible health benefit plan issuers;

4 (3) reinsurance payments made to eligible health
5 benefit plan issuers; and

6 (4) administrative and operational expenses incurred
7 for the reinsurance program.

8 (b) Not later than 60 days after rate filings required by
9 Section 1511.309 for the individual market are submitted, the
10 department shall prepare a report summarizing the quantifiable
11 impact of the reinsurance program on individual market rates for
12 the following plan year.

13 (c) The department shall:

14 (1) electronically submit the reports required under
15 this section to the lieutenant governor, the speaker of the house of
16 representatives, and the chairs of the standing committees of the
17 senate and house of representatives with primary jurisdiction over
18 appropriations and insurance; and

19 (2) post the reports on the department's Internet
20 website.

21 Sec. 1511.315. REPORTING BY HEALTH BENEFIT PLAN ISSUERS.

22 (a) A health benefit plan issuer must report information and
23 provide access to records requested by the department as the
24 department determines necessary for purposes of:

25 (1) preparing the state innovation waiver application
26 under Section 1511.301;

27 (2) determining reinsurance program terms under

1 Section 1511.305;

2 (3) determining the amount of reinsurance payments due
3 to a health benefit plan issuer;

4 (4) monitoring costs and revenue associated with the
5 reinsurance program;

6 (5) administering the reinsurance program; and

7 (6) ensuring compliance with all applicable federal
8 and state laws with respect to the reinsurance program.

9 (b) A health benefit plan issuer must provide information or
10 records requested under Subsection (a) by the department not later
11 than 30 days after the date that the plan issuer receives the
12 request or, if necessary for the department to comply with a request
13 from a federal or state agency, an earlier date as specified in the
14 request.

15 (c) Information and records provided to the department
16 under this section:

17 (1) may only be used by the department for the purposes
18 described by Subsection (a); and

19 (2) are confidential and not subject to disclosure
20 under Chapter 552, Government Code.

21 Sec. 1511.316. REINSURANCE FUND. (a) The reinsurance fund
22 is established as a revolving fund in the state treasury outside the
23 general revenue fund.

24 (b) The fund shall be administered by the department for the
25 purpose of the reinsurance program under this subchapter, including
26 the deposit of federal money available for the reinsurance program
27 and all other money received under or distributed in accordance

1 with this subchapter.

2 (c) Money from the fund may be used to:

3 (1) implement and operate the reinsurance program; and

4 (2) make reinsurance payments to eligible health
5 benefit plan issuers under the reinsurance program.

6 (d) In spending money from the fund, available federal money
7 must be used first.

8 (e) Interest or other income from the investment of the fund
9 shall be deposited to the credit of the fund.

10 Sec. 1511.317. REINSURANCE PROGRAM EXPENDITURES. (a) All
11 costs and expenses incurred from the reinsurance program must be
12 paid from the reinsurance fund, including compensation of employees
13 and independent contractors or consultants hired by the department
14 for purposes of operating the reinsurance program.

15 (b) Each fiscal year, the total amount of annual
16 expenditures from the reinsurance fund, including administrative
17 and consulting expenses, may not exceed the total amount of federal
18 money and money from other sources expected to be allocated to the
19 reinsurance fund for that fiscal year.

20 Sec. 1511.318. TEMPORARY EXEMPTION FROM STATE PURCHASING
21 PROCEDURES. (a) For purposes of implementing and operating the
22 reinsurance program under this subchapter, the department is not
23 subject to state purchasing or procurement requirements under
24 Subtitle D, Title 10, Government Code, or any other law. A contract
25 or agreement entered into before the expiration of this section may
26 not be for a term of more than five years.

27 (b) This section expires January 1, 2023.

SUBCHAPTER H. ENFORCEMENT

Sec. 1511.351. ENFORCEMENT REMEDIES. (a) On satisfactory evidence of a violation of this chapter by a health benefit plan issuer or other person, the commissioner may, at the commissioner's discretion, impose any of the following enforcement remedies:

(1) suspension or revocation of the person's license or certificate of authority;

(2) refusal to issue a new license or certificate of authority to the person, for a period not to exceed one year; or

(3) a fine not to exceed \$5,000 for each violation, except that the fine may be up to \$10,000 if the violation was intentional.

(b) Fines imposed by the commissioner against an individual health benefit plan issuer may not exceed an aggregate amount of \$500,000 during a single calendar year.

(c) Fines imposed against a person not described by Subsection (b) may not exceed an aggregate amount of \$100,000 during a single calendar year.

(d) The enforcement remedies under Subsection (a) are in addition to any other remedies or penalties that may be imposed under other law.

SUBCHAPTER I. TRANSITION PERIOD FOR ESTABLISHMENT OF EXCHANGE

Sec. 1511.401. BUDGET FOR EXCHANGE. (a) In developing the exchange, the exchange authority, in coordination with the department, shall create a budget to fully implement the purposes and functions of the exchange authority and the exchange under this chapter.

1 (b) The exchange authority shall conduct a fiscal analysis
2 to determine ways in which the exchange authority can achieve the
3 purposes of this chapter while spending less on exchange user fees
4 than was spent for the federally facilitated exchange. The
5 exchange authority must include in the fiscal analysis any funding
6 sources available for specific purposes or functions under this
7 chapter, including federal Medicaid matching funds.

8 Sec. 1511.402. ENROLLMENT INCREASE TARGETS. (a) For the
9 period of transition during which the exchange is being established
10 and for the following five years, the department shall establish
11 clearly stated numeric targets of increased enrollment in the
12 exchange, the state Medicaid program, and the child health plan
13 program under Chapter 62, Health and Safety Code.

14 (b) The department shall take immediate steps to increase
15 enrollment, including by lengthening open enrollment periods and
16 streamlining special enrollment periods.

17 Sec. 1511.403. INCREASED ENROLLMENT ADVISORY COMMITTEE.

18 (a) The department shall create an advisory committee to:

19 (1) study ways to increase enrollment in this state;
20 and

21 (2) help develop the five-year plan to reach the
22 numeric targets established under Section 1511.402.

23 (b) The department shall provide funding to the advisory
24 committee for the purpose of employing staff and contracting with a
25 person or entity to provide expertise, actuarial services, or other
26 services as needed.

27 (c) The advisory committee shall provide recommendations to

1 the department and the exchange authority regarding strategies for
2 increasing enrollment, including recommending the percentage of
3 the exchange user fee imposed on premiums for health benefit plans
4 on the exchange that the exchange authority should set aside to
5 enhance subsidies for health benefit plans.

6 Sec. 1511.404. EXPIRATION OF SUBCHAPTER. This subchapter
7 expires September 1, 2027.

8 SECTION 2. (a) As soon as practicable after the effective
9 date of this Act, but not later than October 1, 2021, the governor
10 shall appoint the initial members of the board of directors of the
11 Texas Health Insurance Exchange Authority. The initial board
12 members shall draw lots to achieve staggered terms, with two of the
13 directors serving a term expiring February 1, 2023, two of the
14 directors serving a term expiring February 1, 2025, and three of the
15 directors serving a term expiring February 1, 2027.

16 (b) As soon as practicable after the effective date of this
17 Act, but not later than March 1, 2022, the board of directors of the
18 Texas Health Insurance Exchange Authority shall adopt rules and
19 procedures necessary to implement Chapter 1511, Insurance Code, as
20 added by this Act.

21 (c) Until the board of directors of the Texas Health
22 Insurance Exchange Authority adopts rules under Subsection (b) of
23 this section, the exchange authority shall operate the exchange in
24 accordance with:

25 (1) any applicable federal rules, regulations, or
26 guidance; or

27 (2) interim state guidelines consistent with Chapter

1 1511, Insurance Code, as added by this Act.

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