88R3234 MEW-F

By:  Oliverson H.B. No. 700

A BILL TO BE ENTITLED

AN ACT

relating to creation of the Texas Health Insurance Exchange; 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. TEXAS HEALTH INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1511.001.  DEFINITIONS. In this chapter:

(1)  "Board" means the board of directors of the exchange.

(2)  "Exchange" means the Texas Health Insurance Exchange.

(3)  "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4)  "Qualified health plan" means a health benefit plan that has been certified by the board as meeting the criteria established under Section 1311(c), Patient Protection and Affordable Care Act (42 U.S.C. Section 18031(c)).

(5)  "Secretary" means the secretary of the United States Department of Health and Human Services.

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

(1)  an insurance company;

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

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

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

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

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

(7)  a fraternal benefit society operating under Chapter 885; or

(8)  an exchange operating under Chapter 942.

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

(1)  a plan that provides coverage:

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

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

(C)  for credit insurance;

(D)  only for vision care;

(E)  only for hospital expenses; or

(F)  only for indemnity for hospital confinement;

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

(3)  a workers' compensation insurance policy; or

(4)  medical payment insurance coverage provided under a motor vehicle insurance policy.

Sec. 1511.003.  TREATMENT OF EMPLOYERS. (a) For purposes of this chapter, "small employer" means a person who employed at least two, and an average of not more than 50 employees during the preceding calendar year. This subsection expires December 31, 2025.

(b)  All persons treated as a single employer under Section 414(b), (c), (m), or (o), Internal Revenue Code of 1986, are single employers for purposes of this chapter.

(c)  An employer and any predecessor employer are a single employer for purposes of this chapter.

(d)  In determining the number of employees of an employer under this section, the number of employees:

(1)  includes part-time employees and employees who are not eligible for coverage through the employer; and

(2)  for an employer that did not have employees during the entire preceding calendar year, is the average number of employees that the employer is reasonably expected to employ on business days in the current calendar year.

(e)  A small employer that makes enrollment in qualified health plans available to its employees through the exchange and ceases to be a small employer by reason of an increase in the number of its employees continues to be a small employer for purposes of this chapter as long as it continuously makes enrollment through the exchange available to its employees.

Sec. 1511.004.  RULEMAKING AUTHORITY. The board may adopt rules necessary and proper to implement this chapter. Rules adopted under this section may not conflict with or prevent the application of regulations promulgated by the secretary under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).

Sec. 1511.005.  AGENCY COOPERATION. (a) The exchange, the department, and the Health and Human Services Commission shall cooperate fully in performing their respective duties under this code or another law of this state relating to the operation of the exchange.

(b)  The exchange shall cooperate and coordinate with the Health and Human Services Commission to facilitate a seamless user experience.

Sec. 1511.006.  EXEMPTION FROM STATE TAXES AND FEES.  The exchange is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Sec. 1511.007.  COMPLIANCE WITH FEDERAL LAW. The exchange shall comply with all applicable federal law and regulations.

Sec. 1511.008.  EXEMPTION FROM STATE PURCHASING PROCEDURES. The exchange is not subject to state purchasing or procurement requirements under Subtitle D, Title 10, Government Code, or any other law.

SUBCHAPTER B. ESTABLISHMENT AND GOVERNANCE

Sec. 1511.051.  ESTABLISHMENT. The Texas Health Insurance Exchange is established as an American Health Benefit Exchange and a Small Business Health Options Program (SHOP) Exchange authorized and required by Section 1311, Patient Protection and Affordable Care Act (42 U.S.C. Section 18031).

Sec. 1511.052.  GOVERNANCE OF EXCHANGE; BOARD MEMBERSHIP. (a)  The exchange is governed by a board of directors.

(b)  The board consists of 11 members as follows:

(1)  five members appointed by the governor, two of whom have experience in the health insurance industry;

(2)  three additional members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives; and

(3)  three members appointed by the lieutenant governor.

(c)  In making appointments or nominations under this section, the governor, lieutenant governor, and speaker of the house of representatives shall attempt to make appointments and nominations that increase the board's diversity of expertise.

Sec. 1511.053.  PRESIDING OFFICER. The board shall annually designate one member of the board to serve as presiding officer.

Sec. 1511.054.  TERMS; VACANCY. (a) Appointed members of the board serve two-year terms, with the members' terms expiring February 1 of each odd-numbered year.

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

Sec. 1511.055.  CONFLICT OF INTEREST. (a) Any board member or a member of a committee formed by the board with a direct interest in a matter, personally or through an employer, before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain from any vote on the matter, and may not otherwise participate in a decision on the matter.

(b)  Each board member shall file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business.

(c)  A member of the board or of the staff of the exchange may not be employed by, affiliated with, a consultant to, a member of the board of directors of, or otherwise a representative of a health benefit plan issuer or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic while serving on the board or on the staff of the exchange.

(d)  A member of the board or of the staff of the exchange may not be a member, a board member, or an employee of a trade association of health benefit plan issuers, health facilities, health clinics, or health care providers while serving on the board or on the staff of the exchange.

(e)  A member of the board or of the staff of the exchange may not be a health care provider unless the member receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice.

Sec. 1511.056.  GENERAL DUTIES OF BOARD MEMBERS. (a) Each board member has the responsibility and duty to meet the requirements of this title and applicable state and federal laws and regulations, to serve the public interest of the individuals and small businesses seeking health benefit plan coverage through the exchange, and to ensure the operational well-being and fiscal solvency of the exchange.

(b)  A member of the board may not make, participate in making, or in any way attempt to use the board member's official position to influence the making of any decision that the board member knows or has reason to know will have a material financial effect, distinguishable from its effect on the public generally, on the board member or the board member's immediate family, or on:

(1)  any source of income, other than gifts and loans by a commercial lending institution in the regular course of business on terms available to the public generally, aggregating $250 or more in value, provided or promised to the member within the 12 months immediately preceding the date the decision is made; or

(2)  any business entity in which the member is a director, officer, partner, trustee, or employee, or holds any position of management.

Sec. 1511.057.  REIMBURSEMENT. A member of the board is not entitled to compensation but is entitled to reimbursement for travel or other expenses incurred while performing duties as a board member in the amount provided by the General Appropriations Act for state officials.

Sec. 1511.058.  MEMBER'S IMMUNITY. (a) A member of the board is not liable for an act or omission made in good faith in the performance of powers and duties under this chapter.

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

Sec. 1511.059.  OPEN RECORDS AND OPEN MEETINGS. The board is subject to Chapters 551 and 552, Government Code.

Sec. 1511.060.  RECORDS. The board shall keep records of the board's proceedings for at least seven years.

SUBCHAPTER C. POWERS AND DUTIES OF EXCHANGE

Sec. 1511.101.  EMPLOYEES; COMMITTEES. (a) The board may employ an executive director and any other agents and employees that the board considers necessary to assist the exchange in carrying out its responsibilities and functions.

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

(c)  The exchange may appoint appropriate legal, actuarial, and other committees necessary to provide technical assistance in operating the exchange and performing any of the functions of the exchange.

Sec. 1511.102.  ADVISORY COMMITTEE. The board may appoint an advisory committee to allow for the involvement of the health care and health insurance industries and other stakeholders in the operation of the exchange. The advisory committee may provide expertise and recommendations to the board but may not adopt rules or enter into contracts on behalf of the exchange.

Sec. 1511.103.  CONTRACTS. (a) Except as provided by Subsection (b), the exchange may enter into any contract that the exchange considers necessary to implement or administer this chapter, including a contract with the department, the Health and Human Services Commission, or an entity that has experience in individual and small group health insurance, benefit administration, or other experience relevant to the responsibilities assumed by the entity, to perform functions or provide services in connection with the operation of the exchange.

(b)  This exchange may not enter into a contract with a health benefit plan issuer under this section.

Sec. 1511.104.  INFORMATION SHARING AND CONFIDENTIALITY. The exchange may enter into information-sharing agreements with federal and state agencies to carry out the exchange's responsibilities under this chapter. An agreement entered into under this section must include adequate protection with respect to the confidentiality of any information shared and comply with all applicable state and federal law.

Sec. 1511.105.  MEMORANDUM OF UNDERSTANDING. The exchange shall enter into a memorandum of understanding with the department and the Health and Human Services Commission regarding the exchange of information and the division of regulatory functions among the exchange, the department, and the commission.

Sec. 1511.106.  LEGAL ACTION. (a) The exchange may sue or be sued.

(b)  The exchange may take any legal action necessary to recover or collect amounts due the exchange, including:

(1)  assessments due the exchange;

(2)  amounts erroneously or improperly paid by the exchange; and

(3)  amounts paid by the exchange as a mistake of fact or law.

Sec. 1511.107.  FUNCTIONS. The exchange shall perform all functions and duties related to state-based exchanges required by applicable state and federal law.

Sec. 1511.108.  HEALTH CARE PROVIDER DIRECTORY AND INFORMATION. (a) The exchange may provide an integrated and uniform consumer directory of health care providers indicating which health benefit plan issuers the providers contract with and whether the providers are currently accepting new patients.

(b)  The exchange may establish methods by which health care providers may transmit relevant information directly to the exchange, rather than through an issuer.

Sec. 1511.109.  STATE-ADMINISTERED SUBSIDY PROGRAM. (a) Not later than July 1, 2024, the exchange, in coordination with the department, shall review and make recommendations to the Senate Business and Commerce Committee and the House of Representatives Insurance Committee regarding the feasibility of implementing a state-administered subsidy program for individuals, families, and small employers to purchase health benefit plan coverage.

(b)  With the input and approval of the Senate Business and Commerce Committee and the House of Representatives Insurance Committee, the exchange may develop and implement a state-administered subsidy program.

Sec. 1511.110.  FEDERAL WAIVERS. (a) Not later than July 1, 2024, the exchange, in coordination with the department, shall review and make recommendations to the Senate Business and Commerce Committee and the House of Representatives Insurance Committee regarding the submission of a state innovation waiver that may be granted under Section 1332, Patient Protection and Affordable Care Act (42 U.S.C. Section 18052), with respect to health benefit plan coverage or health insurance products in this state, including recommendations on:

(1)  risk stabilization strategies aimed at addressing risk associated with individuals with high health care costs;

(2)  individual coverage health reimbursement arrangements for employees of large and small businesses in this state;

(3)  financial assistance for different types of health benefit plan coverage, including non-qualified health plans for individuals purchasing coverage; and

(4)  the establishment of account-based premium credits for individuals and families enrolled in coverage through the exchange.

(b)  With the input and approval of the Senate Business and Commerce Committee and the House of Representatives Insurance Committee, the exchange may submit one or more applications to the secretary to obtain a waiver of any applicable provisions of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148).

(c)  On approval by the secretary of a waiver under Subsection (b), the exchange may implement the approved waiver.

SUBCHAPTER D. ASSESSMENTS FOR OPERATION OF EXCHANGE

Sec. 1511.151.  ASSESSMENTS. (a) The exchange may charge the issuers of health benefit plans in this state, including qualified health plans, an assessment as reasonable and necessary to cover the exchange's organizational and operating expenses and expenses related to health coverage programs associated with the exchange. Assessments must be determined annually. The exchange may charge interest for late assessments.

(b)  The commissioner shall adopt rules to implement and enforce the assessment of health benefit plan issuers under this section.

Sec. 1511.152.  GRANTS AND FEDERAL FUNDS. (a) The exchange may accept a grant from a public or private organization and may spend those funds to pay the costs of program administration and operations.

(b)  The exchange may accept federal funds and shall use those funds in compliance with applicable federal law, regulations, and guidelines.

Sec. 1511.153.  USE OF EXCHANGE ASSETS; ANNUAL REPORT. (a) The assets of the exchange may be used only to pay the costs:

(1)  of the administration and operation of the exchange; and

(2)  associated with any health coverage programs associated with the exchange.

(b)  The exchange shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the exchange during the preceding fiscal year. The report must meet any reporting requirements provided in the General Appropriations Act, regardless of whether the exchange receives any funds under that Act. The exchange shall submit the report to the governor, the legislature, the commissioner, and the executive commissioner not later than January 31 of each year.

(c)  General revenue may not be appropriated for the exchange.

Sec. 1511.154.  PUBLICATION OF FINANCIAL INFORMATION. The exchange shall publish the average costs of licensing, regulatory fees, and any other payments required by the exchange, and the administrative costs of the exchange, on an Internet website to educate consumers on those costs. This information must include information on losses due to waste, fraud, and abuse.

SUBCHAPTER E. TRUST FUND

Sec. 1511.201.  TRUST FUND. (a) The exchange fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.

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

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

SECTION 2.  Effective January 1, 2026, Section 1511.003, Insurance Code, as added by this Act, is amended by adding Subsection (a-1) to read as follows:

(a-1)  For purposes of this chapter, "small employer" means a person who employed an average of not more than 100 employees during the preceding calendar year.

SECTION 3.  (a) As soon as practicable after the effective date of this Act, but not later than October 31, 2023, the governor and lieutenant governor shall appoint the initial members of the board of directors of the Texas Health Insurance Exchange.

(b)  As soon as practicable after the appointments required by Subsection (a) of this section are made, but not later than November 30, 2023, the board of directors of the Texas Health Insurance Exchange shall hold a special meeting to discuss the adoption of rules and procedures necessary to implement Chapter 1511, Insurance Code, as added by this Act.

(c)  As soon as practicable after the effective date of this Act, but not later than January 31, 2024, the board of directors of the Texas Health Insurance Exchange shall adopt rules and procedures necessary to implement Chapter 1511, Insurance Code, as added by this Act.

(d)  If, after the effective date of this Act but before the initial members of the board of directors of the Texas Health Insurance Exchange have been appointed as required by Subsection (a) of this section, the Texas Department of Insurance becomes aware of any planning and establishment grants as described by Section 1311, Patient Protection and Affordable Care Act (42 U.S.C. Section 18031), or any other public or private funding source, the department may apply for funding from that source.

(e)  The exchange may not begin operations without adequate funding.

(f)  The board of directors of the Texas Health Insurance Exchange may adopt rules on an emergency basis in accordance with Section 2001.034, Government Code. Notwithstanding Section 2001.034(c), Government Code, a rule adopted under this subsection may remain in effect until January 1, 2027. Rules adopted under this subsection shall be deemed necessary for the immediate preservation of the public peace, health, safety, and general welfare and an additional finding under Sections 2001.034(a)(1) and (2), Government Code, is not required. The authority to adopt rules under this subsection expires January 1, 2027.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.