

By: Averitt

S.B. No. 809

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Health Insurance Risk Pool.

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

SECTION 1. Section 1506.002(b), Insurance Code, as effective April 1, 2005, is amended to read as follows:

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

(1) short-term insurance;

(2) accident insurance;

(3) a plan providing coverage only for dental or vision care;

(4) fixed indemnity insurance, including hospital indemnity insurance;

(5) [~~2~~] credit insurance;

(6) [~~3~~] long-term care insurance;

(7) [~~4~~] disability income insurance;

(8) other limited benefit coverage, including specified disease coverage;

(9) [~~5~~] coverage issued as a supplement to liability insurance;

(10) [~~6~~] insurance arising out of a workers' compensation law or similar law;

(11) [~~7~~] automobile medical payment insurance; or

(12) [~~8~~] insurance coverage under which benefits are payable with or without regard to fault and that is statutorily

1 required to be contained in a liability insurance policy or
2 equivalent self-insurance.

3 SECTION 2. Section 1506.109(a), Insurance Code, as
4 effective April 1, 2005, is amended to read as follows:

5 (a) The pool shall [~~may~~] provide for and use cost
6 containment measures and requirements to make the coverage offered
7 by the pool more cost-effective. The cost containment measures must
8 include individual case management, disease management, and a
9 mail-order prescription drug program in accordance with Section
10 1506.161 and may include [~~, including~~] preadmission screening, the
11 requirement of a second surgical opinion, and concurrent
12 utilization review subject to Article 21.58A [~~, and individual case~~
13 ~~management, to make the coverage offered by the pool more~~
14 ~~cost-effective]~~.

15 SECTION 3. Section 1506.152(a), Insurance Code, as
16 effective April 1, 2005, is amended to read as follows:

17 (a) An individual who is a legally domiciled resident of
18 this state is eligible for coverage from the pool if the individual:

19 (1) provides to the pool evidence that the individual
20 maintained health benefit plan coverage for the preceding 18 months
21 with no gap in coverage longer than 63 days and with the most recent
22 coverage being provided through an employer-sponsored plan, church
23 plan, or government plan;

24 (2) provides to the pool evidence that the individual
25 maintained health benefit plan coverage under another state's
26 qualified Health Insurance Portability and Accountability Act
27 health program that was terminated because the individual did not

1 reside in that state and submits an application for pool coverage
2 not later than the 63rd day after the date the coverage described by
3 this subdivision was terminated;

4 (3) has been a legally domiciled resident of this
5 state for the preceding 30 days, is a citizen of the United States
6 or has been a permanent resident of the United States for at least
7 three continuous years, and provides to the pool:

8 (A) a notice of rejection of, or refusal to
9 issue, substantially similar individual health benefit plan
10 coverage from a health benefit plan issuer, other than an insurer
11 that offers only stop-loss, excess loss, or reinsurance coverage,
12 if the rejection or refusal was for health reasons;

13 (B) certification from an agent or salaried
14 representative of a health benefit plan issuer that states that the
15 agent or salaried representative cannot obtain substantially
16 similar individual coverage for the individual from any health
17 benefit plan issuer that the agent or salaried representative
18 represents because, under the underwriting guidelines of the health
19 benefit plan issuer, the individual will be denied coverage as a
20 result of a medical condition of the individual;

21 (C) an offer to issue substantially similar
22 individual coverage only with conditional riders; or

23 (D) ~~[a notice of refusal by a health benefit plan~~
24 ~~issuer to issue substantially similar individual coverage except at~~
25 ~~a rate exceeding the pool rate; or~~

26 ~~[(E)]~~ a diagnosis of the individual with one of
27 the medical or health conditions on the list adopted under Section

1 1506.154; or

2 (4) provides to the pool evidence that, on the date of
3 application to the pool, the individual is certified as eligible
4 for trade adjustment assistance or for pension benefit guaranty
5 corporation assistance, as provided by the Trade Adjustment
6 Assistance Reform Act of 2002 (Pub. L. No. 107-210).

7 SECTION 4. Section 1506.155(a), Insurance Code, as
8 effective April 1, 2005, is amended to read as follows:

9 (a) Except as provided by this section and Section 1506.056,
10 pool coverage excludes charges or expenses incurred before the
11 first anniversary of the effective date of coverage with regard to
12 any condition for which:

13 (1) the existence of symptoms would cause an
14 ordinarily prudent person to seek diagnosis, care, or treatment
15 within the six-month period preceding the effective date of
16 coverage; or

17 (2) medical advice, care, or treatment was recommended
18 or received during the six-month period preceding the effective
19 date of coverage.

20 SECTION 5. Subchapter D, Chapter 1506, Insurance Code, as
21 effective April 1, 2005, is amended by adding Sections 1506.160 and
22 1506.161 to read as follows:

23 Sec. 1506.160. REIMBURSEMENT RATES. The health benefit
24 coverage provided by the pool must provide payment or reimbursement
25 for covered benefits to physicians and other health care providers
26 at the lesser of:

27 (1) the rate specified in the contract between the

1 physician and other health care provider and the pool or a preferred
2 provider organization or health maintenance organization
3 established by or contracting with the pool; or

4 (2) the applicable Medicare allowable rate.

5 Sec. 1506.161. MAIL-ORDER REQUIREMENT FOR CERTAIN
6 PRESCRIPTION DRUGS. (a) In this section, "maintenance drug" means
7 a drug that is prescribed over a period of time for a chronic or
8 continuing condition, as determined under rules adopted by the
9 board with the approval of the commissioner.

10 (b) If the board determines it is cost-effective to provide
11 prescription drugs through a mail-order prescription drug program,
12 the board shall establish a mail-order prescription drug program.
13 Under the program, a covered individual must purchase maintenance
14 drugs through the program. Maintenance drugs purchased through the
15 program must be purchased in sufficient quantity to provide the
16 covered individual a 90-day supply of the purchased drug.

17 SECTION 6. Subchapter F, Chapter 1506, Insurance Code, as
18 effective April 1, 2005, is amended by adding Section 1506.2522 to
19 read as follows:

20 Sec. 1506.2522. ANNUAL REPORT TO BOARD: ENROLLED
21 INDIVIDUALS. (a) Each health benefit plan issuer shall report to
22 the board the number of residents of this state enrolled, as of
23 December 31 of the previous year, in the issuer's health benefit
24 plans offered in this state, as:

25 (1) an employee or retired employee under a group
26 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 or retired employee for whom a premium is paid and
4 coverage is provided under an excess loss, stop-loss, or
5 reinsurance policy issued by the issuer to an employer or group
6 health benefit plan in this state. A health benefit plan issuer
7 providing excess loss insurance, stop-loss insurance, or
8 reinsurance, as described by this subsection, may exclude from the
9 reported number each individual who is reported by the primary
10 carrier or primary reinsurer.

11 (c) In determining the number of individuals to report under
12 this section, the health benefit plan issuer shall exclude:

13 (1) the dependents of the employee or retired employee
14 or an individual policyholder or subscriber; and

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

18 SECTION 7. Section 1506.253, Insurance Code, as effective
19 April 1, 2005, is amended to read as follows:

20 Sec. 1506.253. ASSESSMENTS TO COVER NET LOSSES. (a) The
21 board shall recover any net loss of the pool by assessing each
22 health benefit plan issuer an amount determined annually by the
23 board based on information in annual statements, the health benefit
24 plan issuer's annual report to the board under Sections [~~Section~~]
25 1506.2521 and 1506.2522, and any other reports required by and
26 filed with the board.

27 (b) To compute the [~~The~~] amount of a health benefit plan

1 issuer's assessment, if any, the board shall:

2 (1) divide the total amount to be assessed by the total
3 number of enrolled individuals reported by all health benefit plan
4 issuers under Section 1506.2522 as of the preceding December 31 to
5 determine the per capita amount; and

6 (2) multiply the number of enrolled individuals
7 reported by the health benefit plan issuer under Section 1506.2522
8 as of the preceding December 31 by the per capita amount to
9 determine the amount assessed to that health benefit plan issuer
10 ~~[is computed by multiplying the total amount required to be~~
11 ~~assessed against all health benefit plan issuers by a number~~
12 ~~computed by dividing:~~

13 ~~[(1) the gross premiums collected by the issuer for~~
14 ~~health benefit plans in this state during the preceding calendar~~
15 ~~year; by~~

16 ~~[(2) the gross premiums collected by all issuers for~~
17 ~~health benefit plans in this state during the preceding calendar~~
18 ~~year].~~

19 (c) A ~~[For purposes of the assessment under this subchapter,~~
20 ~~gross health benefit plan premiums do not include premiums~~
21 ~~collected for:~~

22 ~~[(1) coverage under a Medicare supplement benefit plan~~
23 ~~subject to Chapter 1652,~~

24 ~~[(2) coverage under a]~~ small employer health benefit
25 plan subject to Subchapters A-H, Chapter 1501, is not subject to an
26 assessment under this subchapter ~~[, or~~

27 ~~[(3) coverage or insurance listed in Section~~

1 ~~1506.002(b)]~~.

2 SECTION 8. Chapter 1506, Insurance Code, as effective April
3 1, 2005, is amended by adding Subchapter G to read as follows:

4 SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

5 Sec. 1506.301. SUBROGATION TO RIGHTS AGAINST THIRD PARTY.

6 The pool:

7 (1) is subrogated to the rights of an individual
8 covered by the pool to recover against a third party costs for an
9 injury or illness for which the third party is liable under
10 contract, tort law, or other law that have been paid by the pool on
11 behalf of the covered individual; and

12 (2) may enforce that liability on behalf of the
13 individual.

14 Sec. 1506.302. BENEFITS NOT PAYABLE; ADVANCE OF BENEFITS
15 AUTHORIZED. (a) Under coverage provided by the pool, benefits are
16 not payable for an injury or illness for which a third party may be
17 liable under contract, tort law, or other law.

18 (b) Notwithstanding Subsection (a), the pool may advance to
19 a covered individual the benefits provided under the pool coverage
20 for medical expenses resulting from the injury or illness, subject
21 to the pool's right to subrogation and reimbursement under this
22 subchapter.

23 Sec. 1506.303. REIMBURSEMENT OF POOL REQUIRED. (a)
24 Subject to Section 1506.305, the amount recovered by a covered
25 individual in an action against a third party who is liable for the
26 injury or illness must be used to reimburse the pool for benefits
27 for medical expenses that have been advanced under Section

1 1506.302.

2 (b) The amount of reimbursement required by this section is
3 not reduced by the application of the doctrine established at
4 common law relating to adequate compensation of insureds and
5 commonly referred to as the "made whole" doctrine.

6 (c) Subject to Section 1506.305, the pool shall treat any
7 amount recovered by a covered individual in an action against a
8 third party who is liable for the injury or illness that exceeds the
9 amount of the reimbursement required under this section as an
10 advance against future medical benefits for the injury or illness
11 that the individual would otherwise be entitled to receive under
12 pool coverage.

13 Sec. 1506.304. RESUMPTION OF PAYMENT OF BENEFITS. If the
14 amount treated as an advance under Section 1506.303(c) is adequate
15 to cover all future medical costs for the covered individual's
16 injury or illness, the pool is not required to resume the payment of
17 benefits. If the advance is insufficient, the pool shall resume the
18 payment of benefits when the advance is exhausted.

19 Sec. 1506.305. ATTORNEY'S FEE FOR REPRESENTATION OF POOL'S
20 INTEREST. (a) For purposes of this section, the pool's recovery
21 includes:

22 (1) the amount recovered by the pool in the action; and
23 (2) the amount of the covered individual's total
24 recovery that must be used to reimburse the pool or that is treated
25 as an advance for future medical costs under Section 1506.303(c).

26 (b) If the pool's interest is not actively represented by an
27 attorney in a third-party action under this subchapter, the pool

1 shall pay a fee to an attorney representing the claimant in the
2 amount agreed on between the attorney and the pool. In the absence
3 of an agreement, the court shall award to the attorney payable out
4 of the pool's recovery:

5 (1) a reasonable fee for recovery of the pool's
6 interest that may not exceed one-third of the pool's recovery; and

7 (2) a proportionate share of the reasonable expenses
8 incurred.

9 (c) An attorney who represents a covered individual and is
10 also to represent the interests of the pool under this subchapter
11 must make a full written disclosure to the covered individual
12 before employment as an attorney by the pool. The covered
13 individual must acknowledge the disclosure and consent to the
14 representation. A signed copy of the disclosure shall be provided
15 to the covered individual and the pool. A copy of the disclosure
16 with the covered individual's consent must be filed with the
17 pleading before a judgment is entered and approved by the court.
18 The attorney may not receive a fee under this section to which the
19 attorney is otherwise entitled under an agreement with the pool
20 unless the attorney complies with the requirements of this
21 subsection.

22 (d) If an attorney actively representing the pool's
23 interest actively participates in obtaining a recovery, the court
24 shall award and apportion between the covered individual's and the
25 pool's attorneys a fee payable out of the pool's subrogation
26 recovery. In apportioning the award, the court shall consider the
27 benefit accruing to the pool as a result of each attorney's service.

1 The total attorney's fees may not exceed one-third of the pool's
2 recovery.

3 SECTION 9. (a) This Act applies only to an application for
4 initial or renewal coverage through the Texas Health Insurance Risk
5 Pool under Chapter 1506, Insurance Code, as amended by this Act,
6 that is filed with that pool on or after the effective date of this
7 Act. An application filed before the effective date of this Act is
8 governed by the law in effect on the date on which the application
9 was filed, and the former law is continued in effect for that
10 purpose.

11 (b) Section 1506.155, Insurance Code, as amended by this
12 Act, and Subchapter G, Chapter 1506, Insurance Code, as added by
13 this Act, apply only to pool coverage that is delivered, issued for
14 delivery, or renewed on or after the effective date of this Act.
15 Pool coverage that is delivered, issued for delivery, or renewed
16 before the effective date of this Act is governed by the law as it
17 existed immediately before that date, and that law is continued in
18 effect for that purpose.

19 (c) This Act applies only to an assessment under Subchapter
20 F, Chapter 1506, Insurance Code, as amended by this Act, that is
21 made on or after the effective date of this Act. An assessment made
22 before the effective date of this Act is governed by the law in
23 effect on the date on which the assessment was made, and the former
24 law is continued in effect for that purpose.

25 SECTION 10. (a) In accordance with Section 311.031(c),
26 Government Code, which gives effect to a substantive amendment
27 enacted by the same legislature that codifies the amended statute,

1 the text of Section 1506.002(b), Insurance Code, as set out in
2 Section 1 of this Act, Section 1506.152(a), Insurance Code, as set
3 out in Section 3 of this Act, and Sections 1506.253(a) and (c),
4 Insurance Code, as set out in Section 7 of this Act, gives effect to
5 changes made by Sections 1, 6, and 11, Chapter 840, Acts of the 78th
6 Legislature, Regular Session, 2003.

7 (b) To the extent of any conflict, this Act prevails over
8 another Act of the 79th Legislature, Regular Session, 2005,
9 relating to nonsubstantive additions to and corrections in enacted
10 codes.

11 SECTION 11. This Act takes effect September 1, 2005.