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AN ACT

relating to the Texas Health Insurance Risk Pool.

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

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

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

(1) accident insurance;

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

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

(4) [~~2~~] credit insurance;

(5) [~~3~~] long-term care insurance;

(6) [~~4~~] disability income insurance;

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

(8) [~~5~~] coverage issued as a supplement to liability insurance;

(9) [~~6~~] insurance arising out of a workers' compensation law or similar law;

(10) [~~7~~] automobile medical payment insurance; or

(11) [~~8~~] insurance coverage under which benefits are payable with or without regard to fault and that is statutorily required to be contained in a liability insurance policy or

1 equivalent self-insurance.

2 SECTION 2. Subsection (a), Section 1506.109, Insurance
3 Code, is amended to read as follows:

4 (a) The pool shall [~~may~~] provide for and use cost
5 containment measures and requirements to make the coverage offered
6 by the pool more cost-effective. To the extent the board determines
7 it is cost-effective, the cost containment measures must include
8 individual case management and disease management. The cost
9 containment measures may include [~~, including~~] preadmission
10 screening, the requirement of a second surgical opinion, and
11 concurrent utilization review subject to Article 21.58A [~~, and~~
12 ~~individual case management, to make the coverage offered by the~~
13 ~~pool more cost-effective~~].

14 SECTION 3. Subsection (a), Section 1506.152, Insurance
15 Code, is amended to read as follows:

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

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

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

1 not later than the 63rd day after the date the coverage described by
2 this subdivision was terminated;

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

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

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

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

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

25 ~~[(E)]~~ a diagnosis of the individual with one of
26 the medical or health conditions on the list adopted under Section
27 1506.154; or

1 (E) evidence that the individual is covered by
2 substantially similar individual coverage that excludes one or more
3 conditions by rider; or

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

9 SECTION 4. Section 1506.153, Insurance Code, is amended to
10 read as follows:

11 Sec. 1506.153. INELIGIBILITY FOR COVERAGE.
12 Notwithstanding Section 1506.152, an individual is not eligible for
13 coverage from the pool if:

14 (1) on the date pool coverage is to take effect, the
15 individual has health benefit plan coverage from a health benefit
16 plan issuer or health benefit arrangement in effect, except as
17 provided by Section 1506.152(a)(3)(E);

18 (2) at the time the individual applies to the pool, the
19 individual is eligible for other health care benefits, including
20 benefits from the continuation of coverage under Title X,
21 Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C.
22 Section 1161 et seq.), as amended (COBRA), other than:

23 (A) coverage, including COBRA or other
24 continuation coverage or conversion coverage, maintained for any
25 preexisting condition waiting period under a pool policy;

26 (B) employer group coverage conditioned by a
27 limitation of the kind described by Section 1506.152(a)(3)(A) or

1 (C); or

2 (C) individual coverage conditioned by a
3 limitation described by Section 1506.152(a)(3)(C) or (D);

4 (3) within 12 months before the date the individual
5 applies to the pool, the individual terminated coverage in the
6 pool, unless the individual demonstrates a good faith reason for
7 the termination;

8 (4) the individual is confined in a county jail or
9 imprisoned in a state prison;

10 (5) any of the individual's premiums are paid for or
11 reimbursed under a government-sponsored program or by a government
12 agency or health care provider, other than as an otherwise
13 qualifying full-time employee of a government agency or health care
14 provider or as a dependent of such an employee;

15 (6) the individual's prior coverage with the pool was
16 terminated:

17 (A) during the 12-month period preceding the date
18 of application for nonpayment of premiums; or

19 (B) for fraud; or

20 (7) the individual is eligible for health benefit plan
21 coverage provided in connection with a policy, plan, or program
22 paid for or sponsored by an employer, even though the employer
23 coverage is declined.

24 SECTION 5. Subsection (a), Section 1506.155, Insurance
25 Code, is amended to read as follows:

26 (a) Except as provided by this section and Section 1506.056,
27 pool coverage excludes charges or expenses incurred before the

1 first anniversary of the effective date of coverage with regard to
2 any condition for which:

3 (1) the existence of symptoms would cause an
4 ordinarily prudent person to seek diagnosis, care, or treatment
5 within the six-month period preceding the effective date of
6 coverage; or

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

10 SECTION 6. Section 1506.156, Insurance Code, is amended to
11 read as follows:

12 Sec. 1506.156. BENEFIT REDUCTION; CERTAIN COVERAGES
13 SECONDARY. (a) The pool shall reduce benefits otherwise payable
14 under pool coverage by:

15 (1) the total amount paid or payable through any other
16 health benefit plan or health benefit arrangement; and

17 (2) the total amount of hospital or medical expense
18 benefits paid or payable under:

19 (A) workers' compensation coverage;

20 (B) automobile insurance, regardless of whether
21 provided on the basis of fault or no fault; or

22 (C) a state or federal law or program.

23 (b) Pool coverage provided under Section 1506.152(a)(3)(E)
24 is secondary to the individual coverage described by that paragraph
25 for any period during which that individual coverage is in effect.

26 SECTION 7. Subchapter F, Chapter 1506, Insurance Code, is
27 amended by adding Section 1506.2522 to read as follows:

Sec. 1506.2522. ANNUAL REPORT TO BOARD: ENROLLED

INDIVIDUALS. (a) Each health benefit plan issuer shall report to the board the number of residents of this state enrolled, as of December 31 of the previous year, in the issuer's health benefit plans providing coverage for residents in this state, as:

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

(2) an individual policyholder or subscriber.

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

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

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

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

(2) individuals who are covered by the health benefit plan issuer under a Medicare supplement benefit plan subject to

1 Chapter 1652.

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

6 SECTION 8. Section 1506.253, Insurance Code, is amended to
7 read as follows:

8 Sec. 1506.253. ASSESSMENTS TO COVER NET LOSSES. (a) The
9 board shall recover any net loss of the pool by assessing each
10 health benefit plan issuer an amount determined annually by the
11 board based on information in annual statements, the health benefit
12 plan issuer's annual report to the board under Sections [~~Section~~]
13 1506.2521 and 1506.2522, and any other reports required by and
14 filed with the board.

15 (b) To compute the [~~The~~] amount of a health benefit plan
16 issuer's assessment, if any, the board shall:

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

21 (2) multiply the number of enrolled individuals
22 reported by the health benefit plan issuer under Section 1506.2522
23 as of the preceding December 31 by the per capita amount to
24 determine the amount assessed to that health benefit plan issuer
25 ~~[is computed by multiplying the total amount required to be~~
26 ~~assessed against all health benefit plan issuers by a number~~
27 ~~computed by dividing.~~

1 ~~[(1) the gross premiums collected by the issuer for~~
2 ~~health benefit plans in this state during the preceding calendar~~
3 ~~year, by~~

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

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

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

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

15 ~~[(3) coverage or insurance listed in Section~~
16 ~~1506.002(b)].~~

17 SECTION 9. Chapter 1506, Insurance Code, is amended by
18 adding Subchapter G to read as follows:

19 SUBCHAPTER G. SUBROGATION RIGHTS OF POOL

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

21 The pool:

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

27 (2) may enforce that liability on behalf of the

1 individual.

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

6 (b) Notwithstanding Subsection (a), the pool may advance to
7 a covered individual the benefits provided under the pool coverage
8 for medical expenses resulting from the injury or illness, subject
9 to the pool's right to subrogation and reimbursement under this
10 subchapter.

11 Sec. 1506.303. REIMBURSEMENT OF POOL REQUIRED.

12 (a) Subject to Section 1506.305, the amount recovered by a covered
13 individual in an action against a third party who is liable for the
14 injury or illness must be used to reimburse the pool for benefits
15 for medical expenses that have been advanced under Section
16 1506.302.

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

21 (c) Subject to Section 1506.305, the pool shall treat any
22 amount recovered by a covered individual in an action against a
23 third party who is liable for the injury or illness that exceeds the
24 amount of the reimbursement required under this section as an
25 advance against future medical benefits for the injury or illness
26 that the individual would otherwise be entitled to receive under
27 pool coverage.

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

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

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

14 (b) If the pool's interest is not actively represented by an
15 attorney in a third-party action under this subchapter, the pool
16 shall pay a fee to an attorney representing the claimant in the
17 amount agreed on between the attorney and the pool. In the absence
18 of an agreement, the court shall award to the attorney payable out
19 of the pool's recovery:

20 (1) a reasonable fee for recovery of the pool's
21 interest that may not exceed one-third of the pool's recovery; and
22 (2) a proportionate share of the reasonable expenses
23 incurred.

24 (c) An attorney who represents a covered individual and is
25 also to represent the interests of the pool under this subchapter
26 must make a full written disclosure to the covered individual
27 before employment as an attorney by the pool. The covered

1 individual must acknowledge the disclosure and consent to the
2 representation. A signed copy of the disclosure shall be provided
3 to the covered individual and the pool. A copy of the disclosure
4 with the covered individual's consent must be filed with the
5 pleading before a judgment is entered and approved by the court.
6 The attorney may not receive a fee under this section to which the
7 attorney is otherwise entitled under an agreement with the pool
8 unless the attorney complies with the requirements of this
9 subsection.

10 (d) If an attorney actively representing the pool's
11 interest actively participates in obtaining a recovery, the court
12 shall award and apportion between the covered individual's and the
13 pool's attorneys a fee payable out of the pool's subrogation
14 recovery. In apportioning the award, the court shall consider the
15 benefit accruing to the pool as a result of each attorney's service.
16 The total attorney's fees may not exceed one-third of the pool's
17 recovery.

18 SECTION 10. (a) The legislature shall establish a joint
19 interim committee to study the deficit resulting from the net
20 losses of the Texas Health Insurance Risk Pool and to recommend a
21 method or formula for recouping any deficit that apportions the
22 cost of those losses among the largest possible number of users of
23 the health care system.

24 (b) Not later than September 1, 2006, the committee shall
25 report its findings and recommendations to the governor, lieutenant
26 governor, and speaker of the house of representatives.

27 (c) The lieutenant governor and speaker of the house of

1 representatives shall determine the composition of the committee.

2 (d) This section expires September 1, 2007.

3 SECTION 11. (a) This Act applies only to an application
4 for initial or renewal coverage through the Texas Health Insurance
5 Risk Pool under Chapter 1506, Insurance Code, as amended by this
6 Act, that is filed with that pool on or after the effective date of
7 this Act. An application filed before the effective date of this
8 Act is governed by the law in effect on the date on which the
9 application was filed, and the former law is continued in effect for
10 that 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) The change in law made by this Act to Subsection (b),
20 Section 1506.002, Insurance Code, applies to an assessment under
21 Subchapter F, Chapter 1506, Insurance Code, for a calendar year
22 beginning on or after the effective date of this Act. An assessment
23 for a net loss for a calendar year before the effective date of this
24 Act is governed by the law in effect during the calendar year for
25 which the assessment is made, and the former law is continued in
26 effect for that purpose.

27 (d) The board of directors of the Texas Health Insurance

1 Risk Pool shall refund an assessment amount paid for a period after
2 September 30, 2005, that is attributable to those coverages that
3 are exempt from the assessment because of the change in law made by
4 this Act to Subsection (b), Section 1506.002, Insurance Code, at
5 the time the final net loss for the period for which the assessment
6 is made is determined.

7 (e) Section 1506.253, Insurance Code, as amended by this
8 Act, applies to an assessment under Subchapter F, Chapter 1506,
9 Insurance Code, for a calendar year beginning on or after January 1,
10 2006. An assessment for a calendar year before January 1, 2006, is
11 governed by the law in effect during the period for which the
12 assessment is made, and the former law is continued in effect for
13 that purpose.

14 (f) Notwithstanding Subsection (a) of this section and
15 Section 1506.158, Insurance Code, an individual who is covered by
16 the Texas Health Insurance Risk Pool on the effective date of this
17 Act and who, because of the change in law made by this Act to
18 Subsection (a), Section 1506.152, Insurance Code, would no longer
19 be eligible for coverage, continues to be eligible for coverage
20 from the pool until the individual's coverage is terminated for a
21 reason other than that change in law.

22 SECTION 12. (a) In accordance with Subsection (c), Section
23 311.031, Government Code, which gives effect to a substantive
24 amendment enacted by the same legislature that codifies the amended
25 statute, the text of Subsection (b), Section 1506.002, Insurance
26 Code, as set out in Section 1 of this Act, Subsection (a), Section
27 1506.152, Insurance Code, as set out in Section 3 of this Act, and

1 Subsections (a) and (c), Section 1506.253, Insurance Code, as set
2 out in Section 8 of this Act, gives effect to changes made by
3 Sections 1, 6, and 11, Chapter 840, Acts of the 78th Legislature,
4 Regular Session, 2003.

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

9 SECTION 13. This Act takes effect January 1, 2006.

David Newkirk
President of the Senate

Jim Cradick
Speaker of the House

I hereby certify that S.B. No. 809 passed the Senate on April 26, 2005, by the following vote: Yeas 27, Nays 0; May 27, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Patsy Gow
Secretary of the Senate

I hereby certify that S.B. No. 809 passed the House, with amendments, on May 25, 2005, by a non-record vote; May 28, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by a non-record vote.

Robert Haney
Chief Clerk of the House

Approved:

17 JUNE 05

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:10 PM 06/17/05

Roger Williams
Secretary of State