

BILL ANALYSIS

Senate Research Center

S.B. 1468
By: West, Royce
State Affairs
4/16/2003
As Filed

DIGEST AND PURPOSE

Currently, Texas doctors are faced with some of the highest medical liability insurance rates in the country. The current system has limited guidelines for medical malpractice insurers, and insurance companies set rates based on competition in the insurance market, rather than actuarial principles or a doctor's history. In the past year, doctors have experienced rapid and uncontrolled rate increases. Some medical malpractice insurers, such as surplus lines, risk retention, and trusts, are outside of the insurance commissioner's purview.

As proposed, S.B. 1468 adopts a prior approval system for all medical professional liability insurance rates. It institutes a "good doctor" discount and prohibits cancellation or nonrenewal of policies in unreasonable circumstances. S.B. 1468 also attempts to stabilize rates and minimize the impact of the market by allowing the Texas Department of Insurance to consider only the nature of the risk and other predictable expenses and not the nature of market competition. A surplus lines carrier may only provide professional liability insurance if a doctor or other health care provider cannot obtain the amount of required insurance after a diligent search and the insurance is placed through a surplus lines agent.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 3, Article 5.15-1, Insurance Code); SECTION 2 (Section 4, Article 5.15-1, Insurance Code); and SECTION 3 (Section 4A, Article 5.15-1, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3, Article 5.15-1, Insurance Code, by amending Subsection (d) and adding Subsections (e)-(g), as follows:

(d) Requires rates to be reasonable and promote the continued availability of professional liability coverage for physicians and health care providers through stability from year to year. Provides that rates may not be excessive or inadequate as defined in this subsection or unfairly discriminatory. Deletes a reference to a reasonable degree of competition in the area with respect to the classification to which the rate is applicable from the description of an excessive rate.

(e) Requires the commissioner of insurance (commissioner), after notice and hearing, to establish a system of rate classification for professional liability insurance for physicians and health care providers, based on risk factors, and require an insurer, a self-insurance trust authorized under Article 21.49-4 of this code, and the joint underwriting association established under Article 21.49-3 of this code to use those classifications. Requires the commissioner to classify rates based on the certain factors and prescribe the respective weight to be given each factor.

(f) Requires the commissioner by rule to establish a good doctor discount program for physicians who have few indemnity payments relative to others in their specialty and not more than one indemnity payment in any three-year period. Authorizes the commissioner to establish other eligibility factors directly related to the risk of loss and quality of patient care.

(g) Requires the rate charged for a good doctor discount policy to meet certain qualifications.

SECTION 2. Amends Section 4, Article 5.15-1, Insurance Code, by adding Subsections (d)-(i), as follows:

(d) Requires an insurer that writes professional liability insurance for physicians or health care providers in this state to file with the commissioner at least annually all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state.

(e) Prohibits an insurer from using or changing a rate charged for professional liability insurance for physicians or health care providers without prior approval of the commissioner. Sets forth the procedure to obtain approval under this section.

(f) Provides that if the commissioner does not approve or deny an application under this section on or before the 60th day after the date the commissioner provides public notice under Section 4C of this article, the application is considered approved on the 61st day after that date unless certain conditions apply.

(g) Requires the commissioner to issue written findings in support of a decision not to grant a request for a hearing made under Subsection (f) of this section.

(h) Prohibits the commissioner from approving or allowing to remain in effect a rate for professional liability insurance for physicians or health care providers that is excessive, inadequate, or unfairly discriminatory or otherwise violates this article. Prohibits the commissioner, in determining whether a rate is excessive, inadequate, or unfairly discriminatory, from considering the degree of competition in the market for medical professional liability insurance but requires the commissioner to consider whether the rate mathematically reflects the insurer's investment income.

(i) Requires the commissioner, notwithstanding any other law, to establish a schedule of filing fees to be paid by insurers writing professional liability insurance for physicians and health care providers in this state to cover all administrative and operational costs arising from this article.

SECTION 3. Amends Article 5.15-1, Insurance Code, by adding Sections 4A, 4C, 4D, 7A, 11, 12, and 13, as follows:

Sec. 4A. RATE HEARINGS. (a) Authorizes an insurer to request a hearing under this section if the commissioner disapproves a rate application under Section 4 of this article or withdraws approval for a rate approved under that section.

(b) Provides that at a hearing under this section, the applicant has the burden of proving by clear and convincing evidence that the rate is justified and meets the requirements of this article.

(c) Requires the commissioner to adopt rules governing hearings under this section that include deadlines for scheduling and commencing hearings and procedures to prevent delays in commencing or continuing hearings without good cause. Provides that the sole remedy for the failure of the commissioner to abide by rules adopted under this subsection is a writ of mandamus by any aggrieved party in a court of competent jurisdiction to compel the commissioner to commence or resume hearings under this section.

(d) Requires a hearing under this section to be conducted in accordance with Chapter 2001 (Administrative Procedure), Government Code, to the extent that chapter is not inconsistent with this section, except that:

(1) a hearing may be conducted by an administrative law judge of the State Office of Administrative Hearings pursuant to an order of the commissioner;

(2) the commissioner shall adopt, amend, or reject each decision of an administrative law judge under this section solely on the basis of the record perfected at the hearing;

(3) the rules of discovery shall be liberally construed, and discovery disputes shall be decided by the administrative law judge; and

(4) for the purposes of judicial review:

(A) a decision to hold a hearing under this article is not a final order or decision; and

(B) a decision not to hold a hearing under this article is a final order or decision.

(e) Requires an administrative law judge who holds a hearing under this section to issue a proposal for decision on or before the 30th day after the date the record in the proceeding is closed. Provides that the proposed decision is adopted by the commissioner and final unless the commissioner rejects the order or adopts an amended order on or before the 30th day after the date the commissioner receives the proposed order.

(f) Authorizes any person to initiate or intervene in any proceeding under this section, challenge any action of the commissioner under this article, and sue to enforce any provision of this article.

(g) Requires the commissioner or a court to award reasonable advocacy and witness fees and expenses to any person who demonstrates that the person represents the interests of consumers and has made a substantial contribution to the adoption of any order, rule, or decision by the commissioner or a court under this section. Requires that advocacy fees awarded in connection with a rate application be paid by the applicant.

Sec. 4C. PUBLIC NOTICE AND INFORMATION. (a) Requires the commissioner to notify the public of any rate application filed by an insurer.

(b) Requires that public notice required under this section be made in a certain manner.

(c) Requires that written notice of a hearing under Section 4A of this article be provided to any person who requests notice of those hearings on or before the 30th day before the date of the hearing.

(d) Requires the Texas Department of Insurance (TDI) to make all information provided to TDI under Section 4 or 4A of this article available for public inspection at TDI and on the TDI website.

Sec. 4D. RATE COMPARISON INFORMATION. Requires TDI, on request, and for a reasonable fee to cover the cost of providing the information, to provide a written comparison of the rates in effect for each insurer writing professional liability insurance for physicians and health care providers in this state.

Sec. 7A. BASIS FOR CANCELLATION OR NONRENEWAL. Provides that, notwithstanding any other law, a notice of cancellation or nonrenewal of a policy of professional liability insurance for physicians or health care providers is effective only if

based on one or more of certain reasons.

Sec. 11. WITHDRAWAL FROM MARKET. Prohibits an insurer authorized to write professional liability coverage for physicians or health care providers in this state that withdraws from the market for that insurance in this state from writing that insurance in this state before the 10th anniversary of the date on which the insurer withdraws from the market.

Sec. 12. APPLICABILITY OF INSURANCE LAWS. (a) Provides that, except as provided by Subsection (b) of this section, and notwithstanding any other law, an insurer that writes professional liability insurance for physicians or other health care providers, including a medical liability self-insurance trust authorized under Article 21.49-4 of this code, a Lloyd's plan operating under Chapter 941 of this code, and an exchange operating under Chapter 942 of this code, is subject to the insurance laws of this state applicable to an insurer writing that type of coverage.

(b) Sets forth activities and situations not prohibited by this section.

Sec. 13. PENALTIES AND SANCTIONS. Provides that a violation of Section 4, 4A, 7A, or 11 of this article is subject to penalties and sanctions under Chapters 82 and 84 of this code, the antitrust and unfair business practices laws of this state, and Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code. Authorizes the commissioner to suspend or revoke the certificate of authority of an insurer that violates this article, in addition to penalties provided by this section,.

SECTION 4. Amends Section 3(a), Article 21.49-3, Insurance Code, as follows:

(a) Includes medical liability self-insurance trusts authorized under Article 21.49-4 of this code in the joint underwriting association (association) created by this section. Revises statutory references to conform to existing code. Deletes a provision prohibiting the association from being a licensed insurer. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Article 21.49-4(h), Insurance Code, to require a self-insurance trust to file with TDI, rather than the State Board of Insurance, all liability claims reports which are required under Subchapter D, Chapter 38, of this code, rather than Articles 1.24A and 1.24B, Insurance Code.

SECTION 6. Amends Section 981.004(a), Insurance Code, to authorize an eligible surplus lines insurer to provide surplus lines insurance only if the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state, including the joint underwriting association established under Article 21.49-3 of this code and a self-insurance trust authorized under Article 21.49-4 of this code; and other conditions are met.

SECTION 7. Repealers: Sections 3(b) and (c) (relating to how rates are established) and Section 4(a) (pertaining to the applicability of Article 5.13-2 of this code to the filing of rates and rating information required under this article); Article 5.15-1, Insurance Code; and Articles 21.49-4(e) and (g) (regarding a self-insurance trust engaging in the business of insurance and filing certain forms), Insurance Code.

SECTION 8. (a) Prohibits an insurer that issues or renews a professional liability insurance policy for a physician or health care provider in this state on or after September 1, 2003, including a medical liability self-insurance trust authorized under Article 21.49-4, Insurance Code, or the joint underwriting association established under Article 21.49-3, Insurance Code, from charging a premium for that coverage that is more than 75 percent of the amount that would have been charged by the insurer for the same coverage on September 1, 2001.

(b) Prohibits an entity that is established after September 1, 2003, and that is classified under Section 823.003, Insurance Code, as an affiliate of an insurer that wrote professional liability insurance for a physician or a health care provider in this state on September 1, 2001, from charging a rate for professional liability insurance for a physician or health care provider that is more than 75 percent of the rate charged by the insurer with which the entity is affiliated for the same coverage on September 1, 2001. Provides that if the entity is an affiliate of more than one insurer, the rate under this subsection is determined using the rate of the insurer with which the entity is affiliated that had the lowest applicable rate on September 1, 2001.

(c) Prohibits an insurer, notwithstanding Section 4, Article 5.15-1, Insurance Code, as amended by this Act, on or after September 1, 2003, and before September 1, 2004, from increasing rates reduced under Subsection (a) of this section or established under Subsection (b) of this section unless the insurer files a rate application that complies with Section 4, Article 5.15-1, Insurance Code, as amended by this Act, and the commissioner determines after a hearing under Section 4A of that article, as added by this Act, that the insurer is substantially threatened with insolvency.

(d) Makes application of Article 5.15-1, Insurance Code, as amended by this Act, prospective to September 1, 2003.

SECTION 9. Requires the commissioner, on or before the 120th day after the effective date of this Act, to adopt rules under Section 4A, Article 5.15-1, Insurance Code, as added by this Act. Provides that the sole remedy for failure by the commissioner to adopt rules under that section within the period prescribed by this subsection is a writ of mandamus by an aggrieved party in a court of competent jurisdiction to compel the commissioner to adopt those rules. Provides that this section does not preclude the commissioner from commencing hearings under Section 4A, Article 5.15-1, Insurance Code, before adopting rules under that section.

SECTION 10. Effective date: upon passage or September 1, 2003.