

SUBJECT: Creation of the Healthy Texas Program providing health benefit coverage

COMMITTEE: Insurance — favorable, without amendment

VOTE: 5 ayes — Smithee, Deshotel, Eiland, Hancock, Hunter

2 nays — Isett, Taylor

2 absent — Martinez Fischer, Thompson

SENATE VOTE: On final passage, April 8 — 28-3 (Davis, Shapleigh, Williams)

WITNESSES: For — Shelton Green, Christian Life Commission of the Texas Baptist Convention; Stacey Pogue, Center for Public Policy Priorities; (*Registered, but did not testify*: Jennifer Ahrens, Texas Association of Life and Health Insurers; Michelle Apodaca, Texas Hospital Association; Jay Arnold, National MS Society; Tom Banning, Texas Academy of Family Physicians; Ron Buffum; Amanda Fredriksen, AARP; Harry Holmes, Harris County Healthcare Alliance; Marsha Jones, Travis County Healthcare District; Ann Kitchen, Integrated Care Collaboration, Tex Health Central Texas; Patricia Kolodzey, Texas Medical Association; Bee Moorhead, Texas Impact; Lee Spiller, Citizens Commission on Human Rights)

Against — None

On — Mike Geeslin, Texas Department of Insurance; Mark Hanna, Texas Podiatric Medical Association; (*Registered, but did not testify*: Dianne Longley, Texas Department of Insurance)

DIGEST: SB 6 would establish the Healthy Texas Program. The bill would state that the program would not be intended to diminish the availability of traditional small employer health benefit plan coverage.

**Eligibility.** A small employer — an employer with two to 50 employees — would be eligible to participate in the program if:

- during the 12-month period before the date of application, the small employer did not offer employees group health benefits on an expense-reimbursed or prepaid basis;
- the employer paid at least 30 percent of its full-time employees annual wages that were less than or equal to 300 percent of the federal poverty level; and
- 60 percent or more of the employer's eligible employees elected to participate in the plan.

The commissioner of insurance could extend the 12-month eligibility requirement to 18 months if it was determined necessary to prevent inappropriate substitution of other health benefits plans for a Healthy Texas plan. The commissioner also could adjust the poverty level on which eligibility was based to fulfill the purposes of the program.

A small employer would cease to be eligible to participate in the program if any health benefit plan that provided employee benefits on an expense-reimbursed or prepaid basis was purchased or took effect after the purchase of a Healthy Texas plan.

**Contribution requirements.** A small employer that purchased a qualifying health benefit plan would pay 50 percent or more of the premium for each employee covered, and would pay the same percentage for each employee. The employer would offer coverage to all eligible employees receiving annual wages at or below the income criteria of 300 percent of the federal poverty level or another level determined by the commissioner. Participating employers could elect to pay, but would not be required to pay, all or any portion of the premium paid for dependent coverage under the Healthy Texas plan.

**Participation by health benefit plan issuers.** Any health benefit plan issuer could participate in the program, unless the commissioner established a rule limiting participation. If participation was limited, the commissioner would conduct a competitive procurement process that considered proposed premium rates to select one or more health benefit plan issuers with which to contract. If necessary, a request for proposal would be required to be issued by May 1, 2010.

Regional or local health care programs, in which premiums were paid by small employers, their employees, and another entity, would not be prohibited from participating. The commissioner would establish

participation requirements applicable to regional and local health care programs that considered the unique plan designs, benefit levels, and participation criteria of each program.

**Coverage.** A health benefit plan offered under the program would be required to include a preexisting condition provision that met the criteria established for large and small employer health benefit plans. Healthy Texas plans would not be subject to a health care service or benefit requirement unless a law specifically applied the requirement to these plans. A qualifying health benefit plan only could provide coverage for in-plan services and benefits, except for emergency care or other services not available through a plan provider. In-plan services and benefits would be required to include inpatient and outpatient hospital services, physician services, and prescription drug benefits. The commissioner could:

- approve additional in-plan benefits or emergency care or other services not available through a plan provider if determined essential to achieve the purposes of the program;
- develop various coverage plans, including basic group plans applicable to all eligible program participants, various optional plans, and specific health benefit plans that permitted access to high-quality, cost-effective health care;
- establish certain administrative and operational procedures; and
- establish certain monitoring, oversight, and strategic planning processes.

**Employer certification.** At the time of initial application and at plan renewals, a health benefit plan issuer would obtain from a small employer a written certification, with supporting documentation as requested, that the employer met Healthy Texas eligibility and participation requirements. The bill would establish the criteria for plan application, enrollment, and permissible denial of coverage for a new employee who did not meet application deadlines. A small employer could establish a waiting period of up to 90 days before new employees would be eligible for coverage under a qualifying health benefit plan.

**Plan rating.** A health benefit plan issuer only could use age and gender as case characteristics in setting premium rates for a qualifying health benefit plan. In setting premiums for health benefit plans, a health benefit plan issuer participating in the program would be required to consider the availability of reimbursement from the fund, apply rating factors

consistently with respect to all small employers in a class of business, and charge premium rates that were reasonable and reflected objective differences in plan design. Rating factors used to underwrite qualifying health benefit plans would have to produce premium rates for identical groups that differed only by the amounts attributable to health benefit plan design, and did not reflect differences because of the nature of the groups assumed to select a particular health benefit plan.

The commissioner by rule could establish additional rating criteria and requirements if determined necessary to achieve the purposes of the program. A health benefit plan issuer would file premium rates with TDI for review and approval.

**Healthy Texas Small Employer Premium Stabilization Fund.** The commissioner would establish the Healthy Texas Small Employer Premium Stabilization Fund, which would contain funds appropriated for the Healthy Texas Program from which health benefit plan issuers could receive reimbursement for claims.

A health benefit plan issuer would be eligible to receive reimbursement for 80 percent per enrollee per year of the dollar amount of claims paid between \$5,000 and \$75,000. A health benefit plan issuer could not receive reimbursement for claims paid on behalf of an enrollee that exceeded \$75,000 in that calendar year. The bill would establish criteria for the submission of reimbursement requests.

If the total reimbursement amount requested by health benefit plan issuers for a calendar year exceeded the amount of funds available for distribution, the commissioner would provide for the distribution of any available funds in an amount proportional to a health plan issuer's share of total eligible claims paid. The commissioner would make any excess funds available for distribution in the next calendar year.

The commissioner could obtain the services of an independent organization to administer the fund and submit reports required by the commissioner to evaluate the operation of the fund. including an annual report of the affairs and operations of the fund. An annual report would be delivered to the governor, the lieutenant governor, and the speaker of the House. Stop-loss insurance or reinsurance could be purchased for the fund.

**Total eligible enrollment.** The commissioner would determine the total eligible enrollment under Healthy Texas plans by dividing the total funds available for distribution by the estimated per-enrollee annual cost of total claims reimbursement from the fund. The commissioner would suspend the enrollment of new employers if the commissioner determined that the total reported enrollment exceeded the total eligible enrollment and likely would result in anticipated expenditures in excess of the funds available for distribution. Health benefit plan issuers would provide the department monthly reports of total Healthy Texas plan enrollment and other reports as required by the commissioner.

**Public education and outreach.** Up to eight percent of the annual amount of the fund could be used for public education, outreach, and enrollment strategies targeted to small employers that did not provide health insurance.

The commissioner would adopt the rules required to implement the Healthy Texas Program by January 4, 2010, and would ensure the program was fully operational for plan issuers to make their first annual request for reimbursement on January 1, 2011.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

By establishing the Healthy Texas Program, SB 6 would provide affordable health coverage for small employers with low-wage employees through an innovative public-private partnership. Texas has the highest uninsured rate of any state in the nation, with 6 million people, or 25.2 percent of the population, uninsured. This not only leads to poor health outcomes for those who cannot afford health care, which costs employers in lost productivity, but also places the burden of uncompensated care costs on the taxpayers of Texas through higher local taxes and higher insurance premiums.

The Healthy Texas Program would lead to a reduction in the number of uninsured and a corresponding reduction in uncompensated care costs and worker productivity losses. Although most Texans obtain their health coverage through their employer, the uninsured rate among employees of businesses with 24 or fewer workers is more than 44 percent. Only 32.2 percent of small employers with two to 50 employees offered insurance in Texas in 2006, and employers indicated in TDI focus groups that cost was the number one reason they did not offer coverage.

The Healthy Texas Program significantly could reduce small-employer premiums, which would allow many more people to be insured. The program would be modeled on the Healthy New York program, which offers insurance premiums that are 30 percent lower than premiums paid by those not insured through Healthy New York. Insurers charge higher premiums to smaller groups because they include fewer plan participants over which to spread risk. The Healthy Texas Program would reduce insurer risk by providing participating insurers reinsurance, a type of insurance obtained by insurers to protect against extraordinary losses by policyholders. The state would pay for 80 percent of claims between \$5,000 and \$75,000.

Other elements of the program would reduce costs or otherwise enable more small employers to offer health coverage. Unlike in Texas' broader small-employer market, insurers could not use health status when determining small-employer premiums, and TDI would have to review and approve rates. Removing health status from rate-setting would prevent a single or handful of employees with higher health risks from driving group premiums so high that they were unaffordable. In the current small-employer market, some small employers pay as much as \$2,400 per employee per month; rejected quotes for some employers have been even higher than that. Also, small employer insurers require 75 percent of a business' employees to participate in a plan in order to offer coverage. Many small employers cannot reach this threshold of participation, yet SB 6 would allow employers to join the Healthy Texas Program if only 60 percent of employees participated.

Despite the fiscal note, the Healthy Texas Program only would cost what the Legislature chose to appropriate for the program. Healthy Texas would not be an entitlement program. The bill would require the commissioner of insurance to cap enrollment at the number of participants that could be funded by the appropriation made. Healthy Texas would not compete with the small-employer insurance market, because eligibility would be limited to employers who had not offered insurance during the prior year and who had a workforce composed at least 30 percent of low-wage earners making less than 300 percent of the federal poverty level. Eligible employers that chose to participate would be those who had wanted to provide health coverage, but costs or participation requirements made them unable to do so.

OPPONENTS  
SAY:

The Healthy Texas Program established by SB 6 would be yet another costly government intervention in an insurance market that best would be served by focusing efforts on reducing health costs rather than increasing subsidies. If the private, individual market was subject to fewer mandates, for example, fewer people would need to rely on employers to subsidize their premium payments.

The program would cost \$113 million over the fiscal 2010-11 biennium, if funded at the membership level assumed by the fiscal note. Limited state funds should be reserved only for those most in need, and the Healthy Texas funding would be spent more appropriately on efforts to enroll those eligible but not enrolled in programs such as CHIP.

NOTES:

The fiscal note indicates SB 6 would cost \$112.5 million in general revenue funds in fiscal 2010-11. LBB indicates that the total cost of the Healthy Texas Program would depend on the Legislature's enrollment goals and the extent to which funds were available

The analysis assumes that fiscal 2010 enrollment would be 50,000 members costing \$85 per member per month, that enrollment would increase by 50,000 each year, and that the per-member per month cost would increase to \$116 in fiscal 2014.