SUBJECT: Minimum net worth requirements for HMOs

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Eiland, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Wise

0 nays

1 absent — Thompson

WITNESSES: None

BACKGROUND: The Texas Insurance Code Art. 20A.13(i)-(l) requires HMOs to maintain "surplus" levels ranging from $500,000 to $1,500,000 depending on the type of services offered. An HMO's surplus is the difference between the HMO's assets and its uncovered liabilities.

An HMO can have both uncovered and covered liabilities. Uncovered liabilities are liabilities not covered in HMO contracts, for example, emergency services rendered to plan members by health care providers who do not contract with the HMO, or services by a specialist not in the HMO's network. Covered liabilities are liabilities resulting from contracts with health-care providers stating that the HMO will pay a set fee per patient or rate per service.

Many HMOs may satisfy Texas surplus requirements even though their covered liabilities far exceed their assets. They may be operating legally under Texas law even though they are technically insolvent. As long as enough doctors and other health-care providers remain in the HMO's network, this may not be a problem.

In covered liabilities, the health care provider bears the risk if the cost of services exceeds what the HMO will pay. Providers must collect from the HMO, not the patient. For example, if a physician's cost begins to exceed the payment from the HMO, the physician may refuse to renew or honor a contract.

The HMO is required to be responsible for providing health-care services to plan members. If a number of providers leave the network, the HMO's ultimate risk is the potential cost of maintaining that coverage by other means.

The Texas Insurance Code Art. 20A.13 has insolvency protections for HMOs based on required deposits and rules for the allocation of HMO plan members to other HMOs in the event an HMO falls below the required surplus.

DIGEST:

HB 3023 would replace the surplus requirements for HMOs with net worth requirements. Net worth requirements involve comparisons of total assets both to covered and uncovered liabilities. Net worth would be defined as the excess of total admitted assets over total liabilities, excluding liability for subordinated debt issued in compliance with Article 1.39, Insurance Code.

The amounts required for minimum net worth for the three types of HMOs would remain the same as the amounts currently required in state law for surpluses:

- HMOs offering basic health care services would have to maintain a minimum net worth of $1.5 million.
- HMOs offering limited health care services, for example, long-term care plans, would have to maintain a minimum net worth of $1 million.
- HMOs offering only a single, health-care service plan, for example, vision maintenance, would have to maintain a minimum net worth of $500,000.

The net worth requirements would be phased in by approximately one-third each year until December 31, 2002.

HB 3023 would empower the commissioner of insurance to adopt rules or guidelines requiring any HMO to maintain a specified net worth based on the HMO's premium volume, number of enrollees, adequacy of reserves, investment portfolio, market value fluctuations, types of risk underwritten or reinsured, and other business risks. The commissioner also would be able to phase in the net worth requirements for some HMOs in two years rather than three. Rules adopted by the commissioner would have to be designed to ensure the financial solvency of HMOs for the protection of enrollees.

HB 3023 would repeal the surplus requirement provisions in Texas Insurance Code Art. 20A.13. The provisions in Art. 20A.13 regarding deposit requirements for HMOs and the placement of insolvent HMO plan members with other HMOs would remained unchanged.

HB 3023 would take effect September 1, 1999.

SUPPORTERS SAY:

HB 3023 help protect consumers, businesses and providers by replacing the surplus requirements for HMOs with net worth requirements. HMOs simply should not be allowed to operate when they are technically insolvent. This situation is too dangerous to Texas citizens requiring consistency and continuity in health care from their HMOs, as well as to Texas businesses contracting in good faith with HMOs to protect their employees. Most other states already have net worth requirements for HMOs, so HB 3023 would bring Texas insurance regulation into line with the rest of the country.

HMOs in Texas have lost money since 1995, losing $322 million in 1997 alone. The current HMO market is a waiting game in which companies hope to survive many years of losses in order to end up among the few successful surviving players. This market reality is a great danger to consumers as long as the solvency of HMOs is not maintained.

In February, the WellChoice HMO of San Antonio with 17,000 members was found to have negative net worth by a state district court. The Commissioner of Insurance has taken the WellChoice HMO into receivership and is trying to place its plan members with other HMOs. Although WellChoice would have been insolvent both under current law and HB 3023, the proposed requirements might have called attention to the company's problems much sooner.

It is more accurate to judge the financial health of an HMO by comparing all assets against all liabilities in calculating net worth. Under current law, covered liabilities are not taken into account when a determination is made regarding whether an HMO can safely and responsibly meet its obligations. This means HMOs can satisfy Texas' requirements when their real assets remain far below their actual liabilities.

HB 3023 represents the combined efforts of HMOs, consumer groups, and the Texas Department of Insurance to remedy this serious problem. Both the HMOs and the consumer groups support this bill.

Phasing in the net worth requirements would allow HMOs, especially smaller companies, time to adapt to the new situation. HB 3023 would authorize the insurance commissioner to adopt individualized standards for different

companies, in order to ensure that the net worth requirement would not be too lenient or too harsh for larger or smaller HMOs. In this way, HB 3023 would recognize the diversity of companies found in the HMO industry.

OPPONENTS SAY:

HB 3023 is too vague in the rule-making powers that are delegated to the commissioner of insurance. While it is important for the net worth requirements to be flexible to account for different types of HMOs, the broad power given to the commissioner to adopt different net worth requirements for every HMO might lead to uneven enforcement and inconsistent rules.

NOTES:

A related bill, HB 3022 by Smithee, which includes similar net worth requirements as well as other provisions regarding payments to providers and wellness coverage for children, has been referred to the House Insurance Committee.