

SUBJECT: Nursing home participation in the Joint Underwriting Association

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Eiland, Averitt, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Thompson

0 nays

0 absent

SENATE VOTE: On final passage, March 8 — voice vote

WITNESSES: None

BACKGROUND: In 1975, the 64th Legislature established the Joint Underwriting Association (JUA) to provide medical liability insurance to physicians and other health care providers who cannot find coverage in the voluntary, licensed insurance market. The JUA is made up of all insurers authorized to write, and engaged in writing, automobile and other liability insurance in Texas. A nine-member board of directors representing member insurers, physicians, hospitals, and the public governs the JUA. On February 1, 2000, the commissioner of insurance approved a Texas Department of Insurance (TDI) staff proposal allowing not-for-profit nursing homes to purchase liability coverage from the JUA.

Under current law, any registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, not-for-profit nursing home, radiation therapy center, nonprofit blood bank, migrant health center, or community health center duly licensed or chartered by the state to provide health care may participate in the JUA.

DIGEST: CSSB 415 would amend the Insurance Code, article 21.49-3, to modify the operation of the Texas Medical Liability Insurance Underwriting Association, commonly called the Joint Underwriting Association, and the participation of for-profit nursing homes in the association.

In consultation with the Department of Human Services, the insurance commissioner by rule would adopt minimum underwriting standards for for-profit nursing homes that would have to be met before a for-profit nursing home could obtain coverage through the JUA. The standards would have to ensure the highest practical level of care for residents of those nursing homes.

Rates, rating plans, rating rules, rating classifications, territories, and policy forms for-profit nursing homes would be subject to the requirements for professional liability insurance for physicians and health care providers found in art. 5.15-1 to the same extent as not-for profit nursing homes.

A policy of medical liability insurance issued to or renewed for a physician or health care provider by the JUA could not include coverage for punitive damages assessed against the physician or health care provider.

If the stabilization reserve fund incurred a net underwriting loss from any single category of provider or care of more than 25 percent in any fiscal year, the commissioner could by order initiate or continue the stabilization reserve fund charge for that category until the fund recovered in the amount by which those losses exceeded 25 percent of the fund. The stabilization reserve fund charge would continue only until such time as its net balance was no less than the projected sum of premiums to be written in the year following valuation date, except as provided by the provision.

This bill would take effect September 1, 2001. It would apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2002.

**SUPPORTERS
SAY:**

This bill would help address affordability and availability problems associated with nursing home liability insurance. The nursing home industry has experienced considerable premium increases, while some insurers have departed the Texas market. According to TDI staff, the problem is more serious in the for-profit segment of the industry.

In the past, when other health care providers experienced significant liability insurance cost increases or availability problems, the Legislature decided it was sound public policy to provide them with an insurer of last resort. As

long as it could do so in a manner that would not unduly burden the providers currently purchasing insurance from the JUA, the Legislature should offer the same assistance to for-profit nursing homes, which care for the large majority of nursing home residents in the state. This bill, by including protections for each individual professional group that purchased from the JUA, would allow inclusion of for-profit nursing homes in a responsible manner.

The JUA uses an “experience rating” system with tiered rates for nonprofit nursing home coverage. Under this system, homes with better operating histories have benefitted from lower rates. If for-profit nursing homes were allowed to purchase from the JUA under this bill, the same system would apply to them.

This bill would not propose to pay for the nursing home industry’s liability insurance. Through the JUA, for-profit nursing homes, like other health care providers, simply would be permitted to purchase their own coverage.

OPPONENTS
SAY:

Since nursing homes have incurred high liability in the past, the Legislature should not jeopardize the JUA as a whole to help for-profit nursing homes obtain insurance coverage. Available coverage for these nursing homes may be difficult to obtain, but it does exist.

NOTES:

The committee substitute modified the original by requiring the commissioner by rule to adopt minimum underwriting standards for for-profit nursing homes that would have to be met before a for-profit nursing home could be authorized to obtain coverage through the JUA. The substitute would require the standards to ensure the highest practical level of care for residents of for-profit nursing homes. CSSB 415 also would prohibit coverage for punitive damages assessed against a physician or health care provider in a JUA policy.