

SUBJECT: Expanding employers' group health insurance cooperatives

COMMITTEE: Insurance — favorable, with amendment

VOTE: 6 ayes — Smithee, Seaman, Gallego, B. Keffer, Taylor, Van Arsdale
0 nays
3 absent — Eiland, Bonnen, Thompson

SENATE VOTE: On final passage, April 9 — voice vote

WITNESSES: For — Brian Davis, International Association of Businesses
Against — None

BACKGROUND: In 1993, the 73rd Legislature enacted the Small Employer Health Insurance Availability Act (Insurance Code, art. 26), which allows small businesses to form private nonprofit health insurance purchasing cooperatives. The act also established the Texas Insurance Purchasing Alliance (TIPA) to administer a limited set of health-benefit plans for small employers. The alliance began accepting enrollees in 1995 and became a nonprofit corporation in 1997. Although it experienced success initially, covering about 1,000 firms and 13,000 people at its peak, it was dissolved in 1998. Among issues associated with ending the TIPA were the fact that it offered only three standard plans, created problems regarding agent commissions, and encountered structural pricing difficulties. However, a few private, regional purchasing alliances still exist in Texas, including the Texas Health Care Purchasing Alliance in Houston and the newly formed Liberty Coalition in Galveston.

Insurance Code, art. 26.15 defines the responsibilities of a health insurance purchasing cooperative. These include arranging for small- and large-employer health-benefit plan coverage for small and large employer groups, collecting premiums and administrative expenses, accounting, resolving complaints, and other administrative functions.

DIGEST: SB 10, as amended, would change provisions of Insurance Code, ch. 26, relating to insurance purchasing cooperatives. It would establish private purchasing cooperatives and health group cooperatives. Two or more small or large employers could form a purchasing cooperative to buy small- or large-employer health-benefit plans. A person could form a health group cooperative to buy employer health-benefit plans. A health insurance carrier could not form or be a member of a health group cooperative, but a carrier could associate with a sponsoring entity — such as a business association, chamber of commerce, or other organization representing employers — to help the sponsoring entity form a health group cooperative.

The bill would redefine “cooperative” to include a private purchasing cooperative or a health group cooperative and “board of directors” to include a board elected by a private purchasing cooperative or a health group cooperative. It would define “expanded service area” as any area larger than one county in which a health group cooperative offered coverage.

A health group cooperative or its officials would not be liable for failure to arrange coverage for any particular illness, disease, or health condition.

Special provisions for health group cooperatives. The membership of a health group cooperative could comprise small employers or, at the option of the cooperative, both small and large employers. To participate in a health group cooperative, an employer would have to be a small employer with an average of between two and 50 employees in the preceding year, or a large employer, averaging 51 or more employees in the preceding year.

Subject to geographic service areas, a health group cooperative would have to allow a small or large employer to join the health group cooperative and enroll in health-benefit plan coverage. A health group cooperative would have to allow any small employer to join the health group cooperative and enroll in the cooperative’s health-benefit plan coverage during the initial and annual open enrollment periods.

A sponsoring entity of a health group cooperative could inform its members about the cooperative and the health-benefit plans it offered. Coverage issued through the cooperative would have to be issued through a licensed agent marketing the coverage in accordance with other provisions of the statute.

Two-year commitment. An employer's participation in a health group cooperative would be voluntary, but an employer electing to participate in a health group cooperative would have to commit to buying coverage through the cooperative for two years, except as allowed by the hardship provision. The insurance commissioner would have to adopt rules governing the manner in which an employer could end participation in a health group cooperative because of financial hardship.

A health carrier issuing coverage to a health group cooperative:

- would have to use a standard presentation form, prescribed by the commissioner by rule, to market health-benefit plan coverage through the cooperative;
- could contract to provide health-benefit plan coverage with only one health group cooperative in any county, except that a health carrier could contract with additional health group cooperatives if it provided health-benefit plan coverage in an expanded service area;
- would have to allow enrollment in health-benefit plan coverage during initial and annual enrollment periods and in compliance with the carrier's agreement with the health group cooperative;
- would be exempt from the insurance premium tax or the tax on revenues under the Texas Health Maintenance Organization Act and the retaliatory tax for two years, with respect to the premiums or revenues received for coverage provided to each uninsured employee or dependent, as defined by the commissioner; and
- would have to maintain documentation provided by health group cooperatives to ensure compliance with the commissioner's rules with respect to uninsured employees or dependents.

The commissioner by rule would have to determine who constituted an uninsured employee or dependent.

Exemption. Notwithstanding any other law, a health-benefit plan issued by a carrier to provide coverage for a health group cooperative would not be subject to a state law, including a rule, that related to a particular illness, disease, or treatment or that regulated the differences in rates for services provided within a health-benefit plan network or outside the network. The commissioner would have to implement this exemption by rule. However, a

health-benefit plan provided through a group cooperative would have to provide coverage for diabetes equipment, supplies, and services as required by Insurance Code, art. 21.53G.

Availability of multiple plans. A health group cooperative could offer more than one health-benefit plan, but each plan offered would have to be made available to all employees covered by that cooperative.

Service areas of coverage. With notice to the commissioner, a health carrier could provide health-benefit plan coverage to an expanded service area that included the entire state. A health carrier could apply for approval of an expanded service area that covered less than the entire state by filing with the commissioner an application at least 60 days before the date the health carrier issued coverage to the health group cooperative in the expanded area. At the end of 60 days after the date TDI received an application, the application would be deemed approved unless the application had been approved or disapproved by the commissioner's written order. The commissioner, after notice and opportunity for hearing, could rescind an approval granted to a health carrier if the commissioner found that the carrier had failed to market fairly to all eligible employers in the state or expanded service area.

Risk characteristics. The bill would specify that a cooperative could not limit, restrict, or condition an employer's or employee's membership in a cooperative or choice among benefit plans based on the risk characteristics of a group or any member of a group. To be eligible to exercise its authority, a health group cooperative would have to have at least 10 participating employers.

Cooperative not an insurer or insurance agent. A cooperative would not be considered an insurer, and its employees would not have to be licensed as insurance agents. This exemption from licensure would include a health group cooperative that acted to provide information about and to solicit membership in the cooperative.

Cooperative underwritten as a single entity. A private purchasing cooperative would be considered an employer solely for the purposes of benefit elections. A health group cooperative that comprised only small employers would be recognized as a single employer and would be treated in

the same manner as a small employer, including any provision relating to premium rates and renewal of coverage. A cooperative that comprised small and large employers would be considered a single employer and would be treated in the same manner as a small employer. A cooperative that comprised small and large employers could elect to extend the protections applicable to small-employer groups to the large-employer groups that participated in the cooperative. A health group cooperative would have sole authority to make benefit elections and to perform other administrative functions for its participating employers. The Texas Department of Insurance would have to develop an expedited approval process for health-benefit plan coverage arranged by a health group cooperative.

The bill would take effect September 1, 2003, and would apply to a health-benefit plan delivered, issued, amended, or renewed on or after January 1, 2004. Except for the tax-exemption provisions, the commissioner would have adopted the necessary rules by January 1, 2004. The comptroller would have to adopt rules or procedures to implement the tax exemption.

**SUPPORTERS
SAY:**

SB 10 would enable businesses to join together and buy health insurance as a group rather than as individual employers. While the bill would aim primarily to benefit small businesses, it would not prohibit the participation of large employers. The health group cooperatives established by the bill would allow clusters of employers to increase the number of insurable lives within a group, resulting in lower risks.

Participants in a group cooperative would be underwritten as a group, not individually. This would eliminate a current problem with cooperatives or the present alliances still being underwritten by their individual employer members. Underwriting a health group as a single entity not only would spread risk but would lower premiums. A group cooperative would have to have at least 10 participating employers before it was eligible for the bill's provisions. This would ensure a sufficient number of eligible lives in each cooperative to achieve the goals of spreading risks and reducing premiums.

Under SB 10, employers would have to commit to participating in a group cooperative for two years, since insurance companies would be more likely to participate if the employer membership was stable. Employers that experienced a substantial financial hardship, however, would be able to leave

a cooperative in less than two years. Although stability is important for these cooperatives, small employers should be allowed to withdraw if necessary to save their businesses.

Concerns have been raised that SB 10 would allow large employers to avoid health-benefit mandates in current law. However, many large employers self-insure and thus are not subject to the state's health-benefit mandates.

To form successful cooperatives, these employer groups must have maximum flexibility. This bill would enable group cooperatives to negotiate with insurance companies for coverage they seek, and benefit requirements would not apply to these plans. If cooperatives were allowed to choose their coverage, health insurance plans would not be saddled with unwanted coverage that increases premiums. In addition, employees would not be able to recover if their plan did not cover a particular disease or illness. Employers and insurance carriers need the relief of knowing that they would not be sued for failure to cover a certain illness.

SB 10 would give insurance companies a two-year tax exemption from premium taxes and retaliatory taxes for each previously uninsured life receiving insurance under the bill. Insurers would be more likely to participate if they had a clear economic incentive.

Insurance companies would be limited to one group cooperative per county. If an insurer participated in a statewide or regional cooperative, it would not be precluded from participating in group cooperatives in counties that also were included in the statewide or regional group. This restriction is aimed at preventing insurers from forming high-risk and low-risk health groups.

**OPPONENTS
SAY:**

SB 10 would not be limited to helping small employers buy group health insurance but would extend the same privileges to large employers, giving them an economic advantage — without the risks — over other large employers who chose to be self-funded and thus regulated by the federal Employee Retirement Income Security Act (ERISA). The bill would close one loophole in current law that affects both small and large employers but would create another loophole, allowing insurers, not subject to ERISA, to avoid state-mandated health benefits.

The bill would offer a protection to employers seeking group health insurance coverage by allowing insurers to underwrite as a single group the employers that formed group cooperatives. This would close a loophole that has existed since 1993 and should help small employers obtain more affordable insurance rates. On the other hand, the bill would create a large new loophole by stating that a health-benefit plan issued to a group cooperative would not be subject to state law, including a rule. This, in effect, would grant insurers an opening not to cover certain benefits mandated by state law. This provision would affect large employers in particular, since most state-mandated health benefits exclude small employers. The bill would have other potentially harmful effects on insured employees, as it would allow group cooperatives to exclude a specific illness, disease, or health condition, except for diabetic equipment, supplies, and services.

By authorizing “designer” insurance plans, SB 10 could be confusing for small employers who were not accustomed to the complexities of group health insurance coverage and exclusions. It could leave those employers vulnerable to stripped-down plans that might not offer what their employees needed or what the employers believed they had bought. Since the state, for almost all purposes, does not regulate health insurance rates, employers might find themselves in a situation where there was little correlation between their insurance rate and the coverage provided through their group plan.

SB 10 would grant insurers tax exemptions if they could account for covering people who previously were uninsured, rather than giving a tax incentive to employers who would be paying for such coverage. This would appear to extend a double bonus to insurance companies — the profits associated with their premiums plus a two-year break on premium taxes. It would seem more appropriate for the Legislature to offer tax relief to employers, particularly small employers offering group health insurance coverage for the first time. The state ultimately would lose tax revenue from these tax exemptions, whereas earlier versions of the bill called for a tax credit.

While SB 10 might decrease the number of uninsured people in Texas, it could increase the number of underinsured people. The Legislature would be better off adopting related changes to the Insurance Code under HB 897 by Woolley, et al., than enacting SB 10, which would generate far-reaching problems.

NOTES:

The committee amendment would add to the Senate engrossed version of SB 10 the provision that a health-benefit plan offered by a health group cooperative would have to provide coverage for diabetes equipment, supplies, and services.

A related bill, HB 897 by Woolley, et al., which would treat a small-employer health coalition the same as a single small employer for the purposes of regulation under the Insurance Code, passed the House on April 23. The Senate State Affairs Committee reported the bill favorably, as substituted, on May 20 and recommended it for the Local and Uncontested Calendar.