

SUBJECT: Payments for Joint Underwriting Association liability insurance policies

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Seaman, Eiland, Bonnen, Gallego, Keffer, Taylor,
Thompson, Van Arsdale

0 nays

SENATE VOTE: On final passage, March 27 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Insurance Code, art. 5.15-1 regulates rate setting for liability insurance for health-care providers. It requires insurers to consider many factors when setting rates, including the past and prospective loss and expense experience for all professional liability insurance for Texas health-care providers and the impact of risk management courses. Rates must be reasonable and not excessive or inadequate. The statute also regulates reporting requirements and the process for changing rates. Liability insurance policies issued to health-care providers or physicians may not include coverage for punitive damages that may be assessed against the provider or physician.

In 1975, the 74th Legislature established the Joint Underwriting Association (JUA) to provide medical liability insurance for physicians and other health-care providers who cannot find coverage in the voluntary, licensed insurance market. The JUA comprises all insurers 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. In 2001, the 77th Legislature enacted SB 1839 by Moncrief, which allowed nursing homes to participate in the JUA.

Under current law, any registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, for profit or 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.

Groups that participate in the JUA also pay into a policyholder's stabilization reserve fund. Annual payment is in proportion to the premium payment for liability insurance through the association. Collections of the stabilization reserve fund continue only until the net balance of the fund equals the sum of premiums in the following year. SB 1839 authorized the state to issue bonds through the Texas Public Finance Authority to fund the initial corpus of the JUA for nursing homes, but the state has not done so yet.

DIGEST: SB 339 would allow the JUA to offer coverage for less than one year for eligible participants. The required 90 days' notice of rate change or cancellation would not apply to participants who obtained coverage for less than one year, but appropriate written notice would be required.

The JUA could offer an installment payment plan for liability insurance coverage. Participants using such a plan for coverage could be charged the stabilization reserve fund payment on an installment or lump-sum basis.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: SB 339 would allow physicians and other health-care providers and facilities to obtain short-term coverage from the insurer of last resort. Under current law, the JUA may write policies for a minimum of one year, but not all those seeking coverage need it for that long. The ability to obtain short-term coverage from the insurer of last resort would allow providers and facilities to remain covered while they look for less expensive or more appropriate liability insurance in the private market.

The JUA is not inexpensive coverage, and a one-year minimum may cause providers or facilities to go without coverage while they are in between policies rather than pay the full amount of the JUA policy. This bill would encourage providers and facilities to maintain coverage, a benefit for patients and the health-care market.

OPPONENTS SAY: If the JUA chose to do this, the cost of policies could climb even higher because of administrative expenses associated with short-term policies. It is more important to control costs in the JUA and hold the line on policy

premiums for participants than to make it easier for more providers and facilities to join the JUA.