

SUBJECT: Health care sharing organizations for people of the same religion

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Deshotel, Eiland, Hancock, Hunter, Taylor, Thompson
1 nay — Martinez Fischer
1 absent — Isett

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1276:*)
For — Robert Baldwin, Christian Care Ministry, Inc.; Christie Herrera, American Legislative Exchange Council; (*Registered, but did not testify:* Miryam Bujanda, Methodist Health Care Ministries; Bee Moorhead, Texas Impact)

Against — Will Davis, Texas Association of Life and Health Insurers; Jared Wolfe, Texas Association of Health Plans

On — Douglas Danzeiser, Texas Department of Insurance

BACKGROUND: Insurance Code, ch. 101 governs unauthorized insurance. Sec. 101.002 defines an insurer as a corporation, association, partnership, or individual engaged as a principal in the business of insurance. Sec. 101.051 (b) (7) defines some of the conduct that constitutes the business of insurance, including contracting to provide indemnification or expense reimbursement for a medical expense by direct payment, reimbursement, or otherwise, whether as an insurer, agent, administrator, trust, or funding mechanism, or by another method.

Sec. 101.055 exempts a legally authorized program established by a state agency or political subdivision and federally regulated, multiple-employer welfare arrangements from classification as insurers for contracting to indemnify or reimburse medical expenses as defined by Sec. 101.051(b) (7).

DIGEST:

CSSB 842 would establish the Health Care Sharing Organizations Freedom to Share Act. Health care sharing organizations would be nonprofit, bona fide religious organizations that administered a health care sharing arrangement among people of the same religion.

Required and authorized activities. Health care sharing organizations could not bear risk but would facilitate payment to participants who had financial or medical-related needs from participants with the ability to assist those with those needs. A health care sharing organization would be required to:

- notify participants of sharing amounts;
- provide a monthly statement to participants listing the dollar amount of qualified needs and the amount assigned to participants for sharing;
- maintain a complaint log to track complaints for three years after the date of the complaint;
- provide a notice conforming to format and disclosure requirements, including disclosure that the organization was not an insurance product or discount health care program, the influence of participation on future insurance coverage, the ability to file complaints with the Texas attorney general, and that participants could not be compelled to share payment of a person's medical bills; and
- obtain a signed acknowledgment of the required notice.

A health care sharing organization could:

- establish additional qualifications for program participation, except that a program could not require that a participant speak English;
- limit the financial or medical needs that were eligible for payment;
- cancel a participant's participation in the arrangement if the person was more than 60 days late making a payment;
- issue membership cards that would have to state "Not Insurance;" and
- contract with an administrator or preferred provider organization.

A health care sharing organization could arrange for participants to share bills when a participant experienced disability, and the organization could provide health counseling, education, and resources to participants in the health care sharing arrangement.

Regulation. A health care sharing organization would not be regulated as a discount health care program or insurance and would not be subject to the insurance commissioner's oversight. The bill would add health care sharing organizations to the list of entities that were exempt from classification as an insurer for contracting to indemnify or reimburse medical expenses. Neither the health care sharing organization nor program participants would assume any risk or make any promise to pay the financial or medical-related needs of other participants and would not be risk-bearing entities.

The attorney general would have jurisdiction over health care sharing organizations to ensure compliance, prevention, and prosecution of deceptive trade practices and fraud, including consumer protection. The attorney general could request and receive any organization's audits or U.S. Internal Revenue Service filing. The organization would file an annual report by January 1 of each year with the governor, the attorney general, the lieutenant governor, and the speaker of the House.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 842 would authorize health care sharing organizations, which would allow members of religious nonprofits with similarly held, sincere religious beliefs to participate in cost-sharing arrangements that would assist fellow members with large medical expenses. Participants would contribute monthly gifts to fund these expenses, which would be directed to participants who could be in financial distress and otherwise unable to afford health care.

Health care sharing organizations are covering more and more people who could have qualified for Medicaid but did not want to be a burden on fellow taxpayers. These organizations save the state money and benefit the health and welfare of their members. Such arrangements operate in Texas and have been legally recognized in 11 other states to act as part of ministries and not as health insurance companies. The Texas Department of Insurance took enforcement action against a Texas health care sharing organization in 2008, which demonstrates the need for legislation to authorize their activities in Texas.

Members of religious communities are unique in their motivation to support one another and establish networks to meet one another's spiritual and emotional needs. They already often make gifts and donations to support other members of their faith. Health care sharing organizations would provide another support mechanism for people struggling with health care needs in these faith communities. If these organizations had to be subject to insurance regulation, they no longer could practice their ministry in association with providing members health care assistance.

Health care sharing organizations would not constitute insurance, and the bill would establish disclosure requirements that would make this clear to members and providers. Financial assistance would be provided through gifts — no participant could be compelled to share payment of medical bills. These organizations could not bear risk.

**OPPONENTS
SAY:**

CSSB 842 would allow health sharing organizations to engage in an unfair method of competition because the bill would shield health care sharing organizations from all insurance regulations yet allow them to conduct the same activities conducted by insurance companies. The bill would exempt health care sharing organizations from classification as insurers even if the organization contracted to reimburse medical expenses by any funding mechanism. All other entities that engage in this type of business conduct, with the exception of state agencies, state and local government, and entities that Texas is prohibited from regulating by federal law, are subject to insurance regulation.

Most health care sharing organizations would appear to an outsider like any other insurance plan because participants most often make regular monthly payments similar to premiums. The bill would allow the organizations to contract with benefit administrators or preferred provider organizations, collateralize funds to pay bills, make rules about eligible medical services, and more. Insurers subject to regulation would be at a competitive disadvantage to these organizations because of higher costs to comply with regulation and the inability to avoid certain regulatory standards, such as coverage mandates.

Many other organizations are formed by participants with similarly held beliefs joining together for the care and support of one another. This bill would discriminate against people who did not have a specific, religious affiliation because they could not benefit from a health care sharing organization formed for a group they had joined based on similar beliefs.

Organizations currently engaging in health care sharing arrangements could continue their ministry if they established a separate nonprofit entity to provide health care to their members.

NOTES:

The House companion bill, HB 1276 by Chisum, was heard in the House Insurance Committee on March 17 and left pending.