

SUBJECT: Abolishing the Texas Health Insurance Pool

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, G. Bonnen, Creighton, Morrison, Muñoz, Sheets,
Taylor, C. Turner

1 nay — Eiland

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: *(On House companion bill, HB 2791:)*

For — *(Registered, but did not testify:)* Nora Belcher, Texas e-Health Alliance; Jennifer Cawley, Texas Association of Life and Health Insurers; Marisa Finley, Scott & White Center for Healthcare Policy; David Gonzales, Texas Association of Health Plans; John Hawkins, Texas Hospital Association; Patricia Kolodzey, Texas Medical Association; Katharine Ligon, Center for Public Policy Priorities; Kandice Sanaie, Texas Association of Business)

Against — *(Registered, but did not testify:)* Freddy Warner, Memorial Hermann Health System)

On — Steven Browning, Texas Health Insurance Pool; Betty DeLargy, Texas Health Insurance Pool; Gary Stankowski; *(Registered, but did not testify:)* Doug Danzeiser, Texas Department of Insurance; Tony Gilman, Texas Health Services Authority)

BACKGROUND: In 1997, the 75th Legislature made operational the Texas Health Insurance Pool to sell health insurance policies to individuals unable to get private coverage due to pre-existing health conditions. The "pool," as it is known, began offering coverage in 1998, and enrolled more than 23,000 Texans as of April 2013.

Insurance Code, sec. 1506.105 prohibits pool premiums from exceeding twice the standard risk rate, which is the average private market rate charged to a healthy individual for the same coverage. In practice, the pool's premiums are set at roughly this amount. In 2011, the pool began

using portions of insurers' late claims payment penalties to fund sliding scale premium reductions for enrollees with incomes below 300 percent of the federal poverty level, or about \$34,000 for an individual. As of May 2012, about 3,500 pool enrollees were receiving premium subsidies.

Beginning January 1, 2014, the federal Patient Protection and Affordable Care Act (ACA) will require most individuals either obtain health insurance or pay a tax penalty. Individuals purchasing insurance in a health benefit exchange, an online marketplace of private, government regulated health insurance plans, will not be denied coverage or charged more based on their health status.

DIGEST:

CSSB 1367 would abolish the Texas Health Insurance Pool.

Dissolution. CSSB 1367 would specify that if insurance coverage in Texas' health benefit exchange becomes effective on January 1, 2014, as planned, the Texas Health Insurance Pool would issue policies no later than December 31, 2013, and would terminate its policies' coverage as of January 1.

Should the exchange be delayed, the pool would continue to issue coverage until the exchange was operational, and would terminate its policies when the commissioner of insurance determined the pool's enrollees could be expected to have obtained guaranteed issue coverage.

The bill would require that as soon as practicable, the pool's board of directors develop and submit to the commissioner of insurance for approval a plan for dissolving the board and the pool after the pool's obligations to issue and maintain health benefit coverage were to terminate.

The board's plan would also transfer to the commissioner and the Texas Department of Insurance (TDI) any assets, authority, accumulated rights, and continuing obligations of the board and the pool.

CSSB 1367 would allow the commissioner by rule to delay dissolving the Texas Health Insurance Pool and collecting and distributing its funds if the guaranteed issue of health benefit coverage, such as through the state's health benefit exchange, were delayed, or if the commissioner determined the health benefit coverage expected to be available on a guaranteed issue basis was not reasonably available to individuals eligible for pool

coverage immediately prior to this bill's enactment.

Assets. CSSB 1367 would transfer to TDI any fund or asset of the Texas Health Insurance Pool upon its dissolution and would grant TDI the authority to recover pool overpayments or other amounts, including subrogation amounts, that the pool would have been authorized to recover had it not been dissolved. Any funds collected by TDI during the dissolution process would be deposited in the Texas Treasury Safekeeping Trust Co.

The bill would extend the pool's authority to collect premium assessments on its health benefit plan issuers until the insurance commissioner determined all of the pool's financial obligations had been met. After making this determination, the commissioner either would issue a final assessment or refund any surplus monies not designated for premium assistance on a pro rata or otherwise equitable basis to the health benefit plan issuers.

CSSB 1367 would distribute \$5 million from any surplus premium assistance funds to the Texas Health Services Authority (THSA). Remaining monies would support the Healthy Texas program until December 31, 2013, after which they would be used for any commissioner-authorized purpose to improve uninsured Texans' health insurance access. Any funds payable to THSA or the Healthy Texas program would be subject to audit.

Effective date. Effective January 1, 2014, CSSB 1367 would repeal statutes requiring that employers, health benefit plan issuers, HMOs, and others provide notice of potential eligibility for pool coverage to individuals as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). It would also repeal limits on the amount of gross premium receipts that could be paid toward administrative costs and fees.

Effective September 1, 2015, the bill would repeal ch. 1506, Insurance Code, governing the Texas Health Insurance Pool.

This 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, 2013.

**SUPPORTERS
SAY:**

CSSB 1367 would dissolve the Texas Health Insurance Pool in an orderly manner after it was no longer needed. It is anticipated that nearly all pool enrollees would purchase coverage in the new health benefit exchange between the start of its open enrollment period, October 1, 2013, and the date its policies became effective, January 1, 2014. The exchange is expected to offer guaranteed issue plans that have more coverage options and increased benefits, such as maternity coverage, and that are more affordable than those available in the pool.

CSSB 1367 would wind down the pool in a responsible manner, allowing the board of directors to customize a plan to dissolve the pool and transferring to TDI any needed authority to collect payments and assets and to meet residual obligations, such as unpaid claims. The three-month period for pool enrollees to purchase insurance in the exchange and avoid a gap in coverage is brief, but the pool has already conducted outreach to notify its members of this likelihood and would continue to do so. Should the exchange not be functional on January 1, the commissioner of insurance would retain the ability to continue coverage of those insured through the pool.

The bill would fairly return any insurer overpayment upon the termination of the pool and would distribute funds collected from previously assessed penalties to improve health care quality and access to care.

**OPPONENTS
SAY:**

CSSB 1367 would not adequately ensure Texas Health Insurance Pool enrollees did not face a gap in their coverage should the Affordable Care Act's health benefit exchanges not be fully functional. The bill would be premature and should not be enacted until there is more certainty about the implementation of the Affordable Care Act's many provisions.

NOTES:

The House companion bill, HB 2791 by Smithee, was left pending in the House Insurance Committee on April 23.

CSSB 1367 differs from the Senate-passed version by more specifically defining the allocation of any remaining premium support funds from the pool.