

- SUBJECT:** Creating a temporary health insurance risk pool
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 8 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Turner, Vo
0 nays
1 absent — Sanford
- SENATE VOTE:** On final passage, April 26 — 31-0 on Local and Uncontested Calendar
- WITNESSES:** *On House companion, HB 3226:*
For — (*Registered, but did not testify:* Patricia Kolodzey, Blue Cross Blue Shield; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Lee Manross, Texas Association of Health Underwriters; Becky Parker; Lacci)
Against — None
On — (*Registered, but did not testify:* Nancy Clark, Doug Danzeiser, and Anthony Infantini, Texas Department of Insurance)
- BACKGROUND:** SB 1367 by Duncan, enacted by the 83rd Legislature in 2013, dissolved the Texas Health Insurance Pool. In the years preceding the implementation of the federal Patient Protection and Affordable Care Act, the pool had served as a health insurer of last resort for Texans who, due to medical conditions, were unable to obtain coverage through the private health insurance market.
- DIGEST:** SB 2087 would allow the Texas Commissioner of Insurance, if federal funds became available, to apply for such funds and use them to establish and administer a temporary health insurance risk pool. Its exclusive purpose would be to provide a temporary mechanism for maximizing available federal funding to assist Texas residents in obtaining access to

quality health care at a minimum cost to the public. The pool could not be used to expand the state's Medicaid program, including Medicaid managed care.

Subject to federal requirements, the bill would allow the commissioner to use pool funds to provide:

- alternative individual health insurance coverage to eligible individuals that did not diminish the availability of traditional commercial health care coverage;
- funding to individual health benefit plan issuers that cover those with certain health or cost characteristics in exchange for lower enrollee premiums; or
- a reinsurance program for health plan issuers in the individual market in exchange for lower enrollee premiums.

The commissioner could enter into an appropriate contract or agreement with a similar pool in another state for joint administrative functions, another organization for administrative functions, or a federal agency. The commissioner could contract for stop-loss insurance for risks incurred by uses of pool funds.

The bill would prohibit the commissioner from using state funds to fund the pool unless funds were specifically appropriated for that purpose. Federal funds could be used for administration.

Notwithstanding SB 1367, which abolished the Texas Health Insurance Pool in 2013, the commissioner could use funds appropriated to the Texas Department of Insurance (TDI) from the Healthy Texas Small Employer Premium Stabilization Fund (PSF) to fund the pool under the bill, except for paying salaries and salary-related benefits. The commissioner would be required to transfer an equal amount from the PSF to TDI to pay the direct and indirect costs of the pool. The commissioner also would transfer any money remaining outside the state treasury in the Texas Treasury Safekeeping Trust Company account established by SB 1367 to the PSF on the effective date of the bill.

The commissioner could use funds appropriated to TDI to develop and implement public education, outreach, and facilitated enrollment strategies for the exclusive purpose of implementing the bill's provisions. The commissioner could contract with marketing organizations for this purpose.

The bill would allow the commissioner of insurance to apply for a state innovation waiver of applicable provisions of the federal Patient Protection and Affordable Care Act and any applicable regulations or guidance with respect to health insurance coverage in Texas for a plan year beginning on or after January 1, 2017. The commissioner could take any action he or she considered appropriate for the application. The bill would authorize the commissioner to implement a state plan that met the requirements of a granted ACA state innovation waiver if the plan was consistent with state and federal law and approved by the U.S. Secretary of Health and Human Services.

Any other law notwithstanding, a program created by the bill would not be subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

The commissioner could adopt necessary rules to implement the bill's provisions, including rules to administer the pool and distribute its money. In implementing the bill, the commissioner also could exercise any authority that could be exercised under Texas law by a reinsurer or a health benefit plan issuer authorized to write health benefit plans in Texas.

Beginning June 1, 2018, TDI would submit a report to the governor, lieutenant governor, and House speaker summarizing risk pool-related activities conducted in the previous year, as well as information relating to net written and earned premiums, plan enrollment, administration expenses, and paid and incurred losses.

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, 2017, and would expire August 31, 2019.

**SUPPORTERS
SAY:**

SB 2087 would provide flexibility for Texas to reconstitute the state's former high-risk health insurance pool or to implement another option using federal funds if the federal Affordable Care Act were reformed or abolished.

The bill appropriately would prohibit pool funds from being used to expand Medicaid. No state funds could be used for the pool unless they were specifically appropriated for that purpose.

The bill would allow the Commissioner of Insurance to use pool funds to provide alternative individual health insurance coverage to eligible individuals, to provide funding to individual health benefit plan insurers covering individuals with certain characteristics in exchange for lower individual health premiums, or to provide a reinsurance program for carriers in the individual market in exchange for lower health plan premium rates. The alternative individual health coverage allowed under the bill would not diminish the availability of traditional commercial health care coverage.

SB 2087 would not give preference to one use of pool funds over another and would allow the implementation of a reinsurance option if needed.

The bill would give the commissioner the option to reinstate the pool or another option only if federal dollars were available and if it was a good deal for Texans. If the commissioner decided to reinstate the high-risk pool, there would be no cost to Texas taxpayers, because that cost had already been paid by taxpayers to the federal government. The high-risk pool as it existed before 2013 was an insurer of last resort and only for those who had preexisting conditions and could not get health insurance on the private market.

**OPPONENTS
SAY:**

SB 2087 should use federal funds, if necessary, to develop a reinsurance option that would cost significantly less for patients instead of reinstating the former Texas Health Insurance Pool. A reinsurance

program would work by backstopping insurers' claims on the individual market. This would be preferable to restarting the dissolved Texas Health Insurance Pool, which was a segregated high-risk insurance pool that offered costly insurance.

Health insurance already is available on the private market and there is no need for a high-risk pool to be reinstated as it could be under the bill. A government-administered insurance program, even one with higher premiums than available plans on the private market, could distort Texas' insurance market. Any federal funds used to reinstate the pool also could come with strings attached, which might make it a bad deal for Texans.

NOTES:

A companion bill, HB 3226 by Phillips, was approved by the House on May 2.