SUBJECT: Small employer health benefit plan revisions

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Duncan, Averitt, Counts, De La Garza, G. Lewis, Shields

0 nays

2 absent — Driver, Dutton

WITNESSES: For — Jim Calcote, Robert Howden, National Federation of Independent Businesses; Keith White, Kenneth Tooley, Texas Association of Life Underwriters; David Pinkus, Small Business United; Robert Blevins, Texas Life Insurance Association; Robert Hill; Jon Comola, Blue Cross/Blue Shield of Texas; Robert Schneider, Consumers Union; Dorothy Thorson, Golden Rule; Janet Stokes, Texas Association of Health Underwriters; Dinah Welsh, Texas Association of Business and Chambers of Commerce

Against — David M. Hawkins; David Hundahl; James L. Young, Statesman National Life Insurance Company; G.K. Sprinkle, Texas Counseling Association

On — Pam Beachley, Business Insurance Consumers Association; George B. Allen, Texas Apartment Association

DIGEST: CSHB 369 would amend the Small Employer Health Insurance Availability Act (Insurance Code Chapter 26) to remove employer contribution requirements, to reduce employee participation requirements, to replace the three existing statutory plans with two health benefit plans developed by the commissioner of insurance, to exempt certain "list billed" individual insurance plans from the act and to make other clarifying and conforming adjustments.

CSHB 369 would take effect September 1, 1995. Small employer health benefit plans issued prior to September 1, 1993, would be governed by laws in effect prior to September 1, 1993, except that on or after September 1, 1995, they would be required to conform to underwriting and rating

provisions of the act. A small employer health insurance plan issued on or after September 1, 1993, but before June 1, 1996, would be required to comply with the act as amended on the first renewal date following June 1, 1996.

Health benefit plans. The commissioner of insurance would be required to adopt by January, 1, 1996, a catastrophic care benefit plan and a basic coverage benefit plan and prototype policies for each of the benefit plans. Small employer carriers (such as insurers and HMOs) would be required to offer the two plans on or after June 1, 1996, and could offer additional benefit riders to either of the plans.

CSHB 369 would require the basic coverage plan to be designed to provide hospital, medical and surgical coverage, limited to basic health care requirements. Catastrophic care plans would be required to provide necessary coverage in the event of a catastrophic illness or injury. The commissioner would be required to establish the deductible and coinsurance requirements at levels to permit options for the insured to obtain affordable catastrophic coverage.

The benefit provisions of the policies would be required to include all required or applicable definitions, a list of any exclusions or limitations, a description of covered services and any deductible or coinsurance options.

Carriers would be required to give each small employer a summary of the benefit plans in a format prescribed by the commissioner and to offer and explain each plan upon request by the small employer. Provisions in current law requiring agents to explain plans to all small employers and allowing the department to require demonstration of carrier and agent marketing practices would be repealed.

Existing provisions describing three required health benefit plans (a preventive and primary care plan, an in-hospital plan and a standard health benefit plan) and alcohol and substance abuse benefits would repealed on June 1, 1996, and all references would be deleted.

Health Maintenance Organizations. An HMO could offer a plan developed by the department or a point-of-service contract in addition to a state-approved HMO plan currently allowed in the act.

A "point-of-service contract" would be defined as a benefit plan offered by an HMO that includes indemnity benefits in addition to out-of-area or emergency benefits and permits the insured to obtain coverage under either the HMO conventional plan or the indemnity plan. The contract would be subject to all provisions of the act.

An HMO that participates in a small employer purchasing cooperative could use rating methods allowed by the act for other small employer carriers if the HMO has established a separate class of business and a separate line of business in accordance with the act and applicable federal laws.

Workplace coverage and contribution. CSHB 369 would remove the employer contribution requirement of 75 percent of insurance premium costs but would allow small employer carriers to require an employer contribution if the carrier applies the mandate uniformly to each small employer offered or issued coverage in Texas.

At least 75 percent, instead of 90 percent, of eligible employees would be required for coverage under a small employer health benefit plan. A small employer carrier could offer small employer health benefit plans when less than 75 percent of eligible employees elect to be covered if the carrier allows a similar participation rate for each small employer benefit plan offered in Texas.

If a small employer offers multiple health benefit plans, the collective enrollment of all those plans must be at least 75 percent of eligible employees, unless exempted by the small employer carrier. The definition of "eligible employee" would be changed to specifically exclude employees who are already covered by Medicaid, Medicare or CHAMPUS and elect not to be covered under the employer.

Enrollment. CSHB 369 would provide a 31 day annual open enrollment period and would change the initial enrollment period from at least 30 days to at least 31 days. Provisions limiting exclusion from coverage for late enrollees to 18 months would be removed.

Coverage for newborns under a health benefit plan would expire on the 32nd instead of the 31st day. An employee would have 31 instead of 30 days after the birth of a child to notify and pay required premiums for insurance coverage for the child.

Preexisting condition provisions. CSHB 369 would remove provisions allowing a policy's preexisting-condition provision to exclude conditions that would have caused an ordinary, prudent person to seek medical advice or care. (A preexisting condition provision could continue to exclude conditions for which medical advice, diagnosis, care or treatment was recommended or received within six months prior to coverage).

A carrier that did not use a preexisting-condition provision could impose an affiliation period, or a period during which premiums are not collected and issued coverage is not effective, of no more than 90 days for new enrollees and no more than 180 days for late enrollees.

A carrier could also impose a waiting period on all new enrollees not to exceed 90 days in place of a preexisting condition provision.

Miscellaneous. A private purchasing cooperative would be required to file with the department a copy of organizational documents and written notification of the receipt of a certificate of incorporation or authority from the secretary of state.

The board of directors of the Texas Health Reinsurance System would be exempt from liability for action or omission performed in good faith in the performance of duties under the act.

SUPPORTERS SAY:

CSHB 369 would improve the availability and accessibility of health insurance coverage by making necessary changes to the Small Employer Health Insurance Availability Act enacted in 1993. It reflects the experience gained from a year of program implementation and the

recommendations of the Joint Interim Committee on Health Insurance Access — a committee composed of two representatives, two senators and business, insurance and consumer representatives. CSHB 369 would also clarify ambiguities found in the act's implementation.

CSHB 369 would remove from statute required benefit plans that were found to be unaffordable or unwanted by employers and employees. Required benefits in the standard benefit plan did not result in lower cost health insurance, and the in-hospital and preventive/primary care plans were too limited to be attractive to purchasers. Most employers and employees want some form of comprehensive coverage, and CSHB 369 would give small businesses an opportunity to buy good coverage without the mandates required in other group policies. CSHB 369 would give the commissioner flexibility to design a plan that is both affordable but fairly comprehensive. A true catastrophic plan, instead of a hybrid in-hospital plan, would also be designed as an alternative plan.

CSHB 369 would leave alone existing provisions that would place under the act individual employee health insurance policies that are paid in part by the employer. This would ensure the availability of lower-cost group health insurance coverage by preventing carriers from dropping their small employer health benefit plans in favor of more lucrative and exclusive individual health policies — which was a big part of the problem in the small employer insurance market prior to the act's enactment. Amendments to the act would clarify, however, that carriers could bill employees through the employer, or "list-bill," for individual policies that do not conform to the act's requirements as long as the employer does not contribute to premium payment.

CSHB 369 would also leave intact a key provision in small business health insurance reform — the requirement that small employer health benefit plans to be provided without regard to an employer's claim experience, health status or medical history. This provision, known as "guaranteed issue," will take effect September 1, 1995, and was reexamined and supported by the Joint Interim Committee on Health Insurance Availability. Small business owners overwhelmingly favor guaranteed issue even though it could increase insurance costs slightly. The committee found that

insurance premiums could rise 3-14 percent but that the increase could be mitigated by increased competition and other factors.

Without guaranteed issue better risks would get better rates while many would remain uninsured. Guaranteed issue will bring in both healthy and relatively unhealthy people, but the bigger the pool of enrollees, the better the chance guaranteed issue will have a minimal negative impact on overall insurance risks. Insurers would be protected from the risk of enrolling individuals with higher-than-average health care costs — adverse selection — by the establishment of a reinsurance pool through the Texas Health Reinsurance System. Experience in other states has shown that guaranteed issue, when well drafted, can actually contain rising insurance costs.

This bill would enact additional provisions to protect against adverse selection when guaranteed issue takes effect, including carrier-imposed waiting periods or affiliation periods and an industry-standard employee participation requirement of 75 percent. Carriers also could still exclude from coverage persons with preexisting medical conditions for up to one year.

Proposals to exempt association plans would create a large loophole in the law and would virtually eliminate the act's benefits, such as guaranteed issue and standardized policies, that employers and employees of small businesses now enjoy. Proposals to additionally cap small carrier risks are unnecessary and could serve to complicate regulation and reinsurance protections now in place. Capping carrier involvement could also reduce the availability of small employer health insurance coverage.

CSHB 369 would provide increased flexibility for employers and carriers that would improve accessibility to health benefits and help meet the demands of small businesses or insurance industry trends. Employers would only be required to cover 75 percent, instead of 90 percent, of their eligible employees, so that a few employees who elect not to enroll in health benefits could not prevent the entire business from obtaining benefits.

Elimination of the 75-percent employer contribution requirement would help those businesses that can not afford to pay 75 percent of the premium

but that have employees who are willing to pay a larger share of the costs. Changes in the definition of "eligible employee" also would help businesses meet the 75-percent requirement by allowing them to exclude employees covered under federal health programs.

Carriers could require a minimum contribution rate from employers or reduce the employee participation rate under certain circumstances. They could also impose a waiting period or affiliation period in place of preexisting condition provisions.

Employers and employees would benefit from the removal of language excluding coverage to people who should have sought medical advice or treatment for a condition by eliminating a difficult-to-substantiate clause that could be used by carriers to exclude coverage.

HMO provisions would allow HMOs to fully participate in small employer health insurance market and purchasing cooperatives by enacting standard HMO business practices not specifically provided for in the act, such as point-of-service contract and affiliation periods. CSHB 369 would also authorize HMOs to use age and gender rating when participating in purchasing cooperatives so that they may compete on a level playing field with traditional insurance carriers.

OPPONENTS SAY:

CSHB 369 does not go far enough to provide small employers sufficient flexibility in providing employee health benefit coverage. Some businesses want to provide coverage to just a portion of their employees, such as management staff. Also, some provisions protecting carriers from adverse risk can serve to unfairly reduce employee coverage.

The 75-percent participation rate would prevent many small employers, such as some restaurants, residential management firms or construction firms, from offering any health benefits to their employees. Businesses with small profit margins may not be able to afford health benefits for all employees, but they may want to provide a special benefit to fulltime, long-term or managerial staff without also offering the benefit to lower-wage, unskilled or generally short-term employees. A 75-percent participation requirement would also essentially require many small employers to pay for

most, if not all, of the premium costs in order to get the participation of low wage employees.

CSHB 369 should remove from the act's requirements individual policies that are paid in part by employers so that employers could have that alternative to insure or assist in the insurance of some of their employees. Even though individual insurance generally costs more than group insurance, it could be a means of providing coverage to some employees when the 75-percent participation rate cannot be met.

Another alternative could be to exempt association plans from the act's requirements, for example, to allow health benefit plans offered by trade associations to be exempt from participation requirements and guaranteed issue provisions.

OTHER OPPONENTS SAY:

CSHB 369 should further protect certain carriers from carrying a disproportionate share of risk or losses. Alternatively, it should repeal the guaranteed issue and reinsurance provisions that were enacted last session and will be implemented September 1, 1995.

Small carriers may still be subject to too much risk, especially since participation requirements and employer contribution requirements would be reduced or eliminated. Placing a cap on the amount of uninsurable employees a carrier would have to assume under guaranteed issue could be one way of protecting small carriers. If an employer offers multiple plans from more than one company, carriers should have the opportunity to withdraw their proposal to cover the business if the number of employees enrolling in one plan is not large enough to protect against adverse risk.

Guaranteed issue could damage the insurance industry — just as it would be cost-ineffective to offer fire insurance policies to owners of burning buildings, it would be cost-ineffective to allow persons with known health problems or health risks to purchase health insurance when health services are needed. Many people are uninsured because they are sick. Guaranteed issue will create higher health insurance costs by the influx of high risk and sick people into the insurance system. Guaranteed issue will also remove an insurer's ability to discriminate and therefore remove an important method to control costs.

Reinsurance, the safety-net of guaranteed issue, is designed to reduce insurer risk, not health care costs. Overall, reinsurance mechanisms will add to the cost of health insurance through increased bureaucracy and expense.

NOTES:

The committee substitute differs from the original version in that it added certain exclusions from the definition of eligible employee, it allowed carriers to require employer contributions under certain circumstances, it added provisions exempting certain individual policies remitted through a payroll deduction method, it changed from three months to 31 days the length of the initial enrollment period, it added HMO and waiting period provisions and it made the act effective September 1, 1995, instead of January 1, 1996.

The committee substitute also deleted provisions in the filed version that would have created a Benefits Planning Committee to develop the benefit sections of the two statutory plans.