

SUBJECT: Establishing the Texas Healthy Kids Corporation

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Berlanga, Hirschi, Coleman, Davila, Delisi, Glaze, Janek, Maxey
0 nays
1 absent — Rodriguez

WITNESSES: For — Sharon Bischofshausen, Sara Speights, Texas Association of Marriage and Family Therapy; Mark Hanna, Texas Podiatric Medical Association; Clark Jobe, Texas Insurance Purchasing Alliance; Sandy Kibby, Texas Congress of PTA; Jeff Kloster, Texas HMO Association; Mary Jo Magruder, Texas Planning Council for Developmental Disabilities; Lisa McGiffert, Consumers Union; Cliff Price, Texas Pediatric Society and Texas Medical Association; Janet Stokes, Texas Association of Health Underwriters; Leslie Hernandez, National Association of Social Workers; Minella Pavlik, Brenda Watson, Central Texas March of Dimes; Tracy King, Texans for Quality Health Care; Marriella Branson, Texas March of Dimes; Liz Newhouse, Texas Respite Resource Network; Steve Montgomery, Harris Methodist Health System; Kay Lambert, Advocacy, Inc. and ARC of Texas; Colleen Horton, Texas Advocates for Special Needs Kids; Helene Botsonis and Warren E. Hastings, Texas Maternal and Child Health Coalition; Linda North, Blue Cross/Blue Shield; Nancy E. Holman, Texas Career Children; Cindy Antolik, American Cancer Society; Greg Hooser, Texas Dietetic Association; Eril Furman, Kaiser Permanente of Texas; Mark B. Samuels, Texas Business Group on Health; Lynda Woolbert, Coalition for Nurses in Advance Practice; Robert K. Feather, Cook Children's Medical Center; and 16 individuals representing themselves

Against — Pat Carlson, Texas Eagle Forum; Helen Sue Carter; Albert Cheng, Free Market Committee

On — Layton Black, John O'Connell, H. Patrick Sullivan, Office of the Attorney General; Mike McKinney, Texas Health and Human Services Commission; Tom Camp and Billy Millwee, Texas Department of Health;

Tyrette Hamilton, Texas Department of Insurance; Cindy Alexander, Office of the Comptroller

DIGEST: CSHB 3 would create the non-profit Texas Healthy Kids Corporation to establish a health benefits program for children under the age of 18 who are not covered or not adequately covered by health insurance or health benefit plans. Parents or guardians would be responsible for premium payments, which could be structured on a sliding scale basis, and a special account would be established to help parents who were unable to meet payments. The corporation could receive private financial donations, including donations from non-profit hospitals.

CSHB 3 would specify that the corporation would not be an insurer nor could it self-insure but would contract for the provision of health benefit program coverage and could obtain services from a third-party administrator. Insurers and HMOs would have to hold a valid license or certificate of authority to participate in the program but would be exempt from premium or HMO taxes and from benefit mandates.

The commissioner of insurance would have to approve corporate bylaws, standards, plans of operation, and health benefit plans prior to implementation. The commissioner also would be required to take the steps necessary to create the corporation in accordance with the Texas Non-Profit Corporation Act by the 60th day after the effective date of the act.

The bill also would amend the tax code (sec. 171.063) to allow non-profit hospitals to meet their state tax-exemption requirements by donating money to the corporation.

CSHB 3 would take effect immediately, except for the tax code amendments, which would take effect January 1, 1998.

Health benefit program

The corporation would be required to develop the benefits structure of the health benefit program; determine eligibility criteria for children and their families; develop participation criteria for authorized insurers, health service organizations, health maintenance organizations, and other entities; educate

the public about the program; establish participation objectives for the program; and negotiate premiums for coverage and applicable copayments, coinsurance or deductibles.

The parents or other guardians of a child would be responsible for premium payments and copayments, coinsurance and deductibles. The corporation would be required to terminate coverage of a child due to failure to pay a premium, but could allow premiums to be paid from the premium stabilization account (see page 4) under certain conditions. The corporation could develop a variable premium structure based on ability to pay. It also could require the parent or guardian to pay a reasonable enrollment fee.

Healthy Kids benefit coverage would be secondary to any other available private coverage and would be the payor of last resort. The corporation could restrict eligibility for program coverage or impose a waiting period or other restriction to minimize any adverse impact on plan availability.

The corporation could obtain medical records and other information on a child applying for or participating in the program on receipt of informed written consent from the parent or guardian. The information would be considered confidential and exempt from disclosure and discovery in a civil action, and could not be released without the written consent of the responsible adult.

The corporation also could establish group coverage plans for children in specified geographic regions of the state or based on criteria approved by the commissioner of insurance. The board would be required to conduct a study to determine the feasibility of initially offering the plan on a statewide basis.

CSHB 3 would require the corporation to offer a health benefit plan no later than the first anniversary of the effective date of the act. The board would be required to determine the feasibility of initially offering the plan in each region of the state; program implementation could be staggered by region.

Program providers

In order to participate in the program, providers would have to hold a certificate of authority or other appropriate license from the Texas

Department of Insurance. They would not have to comply with laws requiring that certain benefits or services be offered or provided, and they would not be subject to insurance premium taxes or HMO taxes on money received for coverage provided under the program.

The corporation would establish a process to handle complaints against the providers and to ensure that providers complied with complaint procedures.

Funding — Premium Stabilization Revolving Account

CSHB 3 would establish a Texas Healthy Kids Fund outside the state treasury to hold appropriations and funds in the premium stabilization revolving account. The bill also would authorize the corporation's board to request and accept grants and gifts of money, property or services.

The corporation could use most grants or gifts for any purpose, but would be restricted to using community benefit donations made by non-profit hospitals or hospital systems to meet state tax-exemption requirements to purchase health benefits for children in families with incomes of less than 200 percent of the federal poverty index residing in the county or neighboring county in which the hospital or hospital system operated.

The premium stabilization revolving account would pay for children whose parents were not able to meet premium payments and who were not covered by another health benefit plan. The account would be funded by a charge for each covered child not to exceed \$5 per month and any appropriation or gift to the account. The corporation would determine the time period and circumstances under which premiums could be paid out of the account. If the parent or guardian did not reimburse the account for the premium paid, coverage would be subject to termination in accordance with criteria established by the board.

Interaction with other state programs

State agencies responsible for health and human services, insurance, the federal Title IV-D child support activities (currently the Attorney General's Office) and the comptroller would be required to assist the corporation.

CSHB 3 would direct the corporation, the Attorney General's Office, the Department of Human Services, and the Department of Health to exchange information about children covered under the program who also were subjects of medical child support orders or who might be eligible for a federal or state-funded health or human services benefit program.

The health department could use appropriated funds to purchase plan coverage for eligible children receiving health benefits under the chronically ill and disabled children's (CIDC) program or another non-Medicaid health department program if the Healthy Kids benefits were more cost-effective than those provided and services and benefits for the child would not be adversely affected.

CIDC and other health department services could not be reduced or eliminated because of services provided through the Healthy Kids Corporation.

Court-ordered medical support

CSHB 3 would require courts to order parents to apply for health benefits coverage for their children under the Healthy Kids Corporation if health insurance were not available through employment or membership in a union, association or other organization, or if the parent could not afford health benefits from another source. A court could not order coverage before the plan was offered by the corporation.

The corporation would be required to issue coverage if the child was found eligible and to explain to the employer of the obligated parent about paycheck withholding and other requirements. Employers could not discriminate in hiring or employment based on medical support orders.

If health coverage were not available under a Healthy Kids plan, the court would have to order the obligated parent to pay a reasonable, monthly amount for medical support. CSHB 3 would establish \$38 per month as a presumed reasonable amount but would allow the court to order the payment of a greater or lesser amount. The Health and Human Services Commission could promulgate guidelines concerning reasonable amounts that courts could presumptively apply.

Corporate organization and oversight

The corporation would be required to comply with the Texas Non-Profit Corporation Act. The corporation would operate under a board of six members appointed by the governor with Senate consent, with the commissioners of health and human services and insurance and the director of the federal Title IV-D child support program (currently the Office of the Attorney General) as nonvoting ex officio members. Eligibility for appointment would be subject to conflict of interest provisions. The board would elect a presiding officer on an annual basis.

The board would be empowered to carry out its duties and adopt bylaws and exercise complete fiscal control over the corporation. It also would hire an executive director who would have to post a surety bond for the proper safekeeping and disbursement of corporate funds.

The board and corporation would be subject to open meetings and open records laws and would be required to provide the public with reasonable opportunities to speak before it. The corporation would also be subject to audits by the State Auditor's Office. The corporation would be required to use prudent business practices in the procurement of goods and services; laws governing state agency procurement of goods and services would not apply.

The corporation would not be subject to franchise taxes and would be required to take the necessary steps to maintain federal income tax exemption. The corporation and its employees would receive the same immunity and limitations to liability granted to nonprofit charitable organizations under chapter 84 of the Texas Civil Practice and Remedies Code.

The corporation would be required to submit reports on the program's status, administrative expenses, and financial condition to the governor, legislative leadership and the commissioner of insurance by January 1 of odd-numbered years.

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SUPPORTERS SAY: CSHB 3 would help provide affordable health benefit coverage for 1.3 million uninsured Texas children of low and moderate income families and in the process create savings to the state and to local taxpayers. The bill is backed by the speaker and representatives from insurance, business and health care industries as well as consumer advocates. Many features of this bill were recommended by the Texas Performance Review in its 1996 report *Disturbing the Peace* (recommendation HHS 1). The fiscal note to CSHB 3 shows the program would produce a net savings of \$207,500 in general revenue-related funds by the end of the biennium in August 1999 because Healthy Kids plan would move children off state Medicaid rolls.

Texas has a disproportionate number of uninsured children whose families have too many resources to qualify for Medicaid but who cannot afford insurance for the whole family or who work for employers that do not offer insurance or insurance for dependents. One out of every four Texas children is uninsured. Surveys show Texas ranks either first or second among states in terms of both the percentage and the actual number of uninsured children. About 63 percent of these children are from two-parent working families. About 25 percent of uninsured children come from families with incomes exceeding \$35,000 annually.

CSHB 3 would help improve the lives, education and potential of uninsured children. A healthy childhood is the foundation for a healthy, productive adulthood. Unhealthy children have difficulty concentrating on school work and participating in school activities and miss opportunities to develop mental, emotional and work skills. Because uninsured children are less likely to receive preventive care or therapeutic care in the early stages of an illness, they are 25 percent more likely to miss school than insured children. Their absences cost local school districts about \$4 million per day in state funding last year. Productivity and often family income are reduced when a working parent must take time off to care for a sick child.

CSHB 3 would save money for local taxpayers and for individuals with health coverage, who subsidize the cost of treating uninsured children. Such children are five times more likely to use costly hospital emergency rooms as their chief source of medical care and are four times more likely to require hospitalization because of delayed treatment. In 1993, the 12 hospital districts in Texas, supported in a large part by local taxes, spent over \$100

million on in-patient care for uninsured children. The price of care for uninsured individuals also is passed onto covered individuals in the form of higher hospital and medical charges and higher premium payments.

CSHB 3 *would not* create a new bureaucracy but rather establish an innovative partnership that would stimulate free enterprise, spur private sector involvement in a statewide problem, and provide savings to the state. Since many foundations are prohibited from giving to government entities, the bill would establish a vehicle to receive from private sources charitable funds that would be used to enact a public good. The role of state government would be limited; the corporation would not become an insurer and would add only three employees to the state payroll.

Other methods of providing or creating incentives for offering affordable health benefits for children would also entail bureaucratic oversight and implementation controls. A public/private partnership is the only method that allows for private contributions and community involvement. Extending tax breaks and exemptions from mandates to *all* insurers and HMOs, as some propose, would not be sufficient to guarantee the increased availability of affordable insurance to cover children and other uninsured individuals.

CSHB 3 would not prevent or remove the need for establishing a high risk pool, but coverage through a high risk pool would not be affordable for, nor appropriate to meet the needs of, normally healthy individuals who constitute the vast majority of uninsured children. High risk pool coverage can cost as much as 150 to 200 percent of standard premiums, and it usually does not target primary and preventive care services. Texas Healthy Kids plans would focus on primary and preventive care benefits, which are also the most affordable and cost-effective coverage for most children.

The public/private approach to health benefits coverage has proven successful in other states: at least 24 states have adopted measures to encourage the provision of health benefits through a public/private partnership. The Florida plan, upon which CSHB 3 is modeled, began its region-by-region implementation in 1993 and now covers over 50,000 children and is still growing. Furthermore, evidence exists that this program would be effective in Texas. Last session, the Legislature enacted HB 997

by Cuellar, which authorized a pilot project in Laredo similar to the Texas Healthy Kids plan. The pilot has demonstrated that private companies are willing to contribute to a public/private venture and that competition in the health benefits market can be stimulated to create affordable coverage for children.

CSHB 3 would not further segment the health benefit market nor would it intrude on any viable existing market in children's benefit plans. The biggest segment of the health benefit market is composed of self-insured plans, which are not subject to state regulation. In contrast, the children's health benefit market in Texas is minuscule — researchers could find only one company that designs and markets plans to cover children. CSHB 3 would stimulate competition to fill in the gaps where affordable coverage for children is not available.

CSHB 3 *would not* create an entitlement program that would continually drain state dollars. Eligibility and benefits would be structured and restricted to ensure that plans were cost-effective and available, and the program could be implemented on a regional basis to ensure fiscal soundness. The corporation would be under no duty to accept all applicants. Furthermore, private funds and family premium payments would also help the program pay for itself. Neither the state nor private entities would be obligated to provide or continue to provide funding. Under the scenario used by the LBB to develop the fiscal note, the program would no longer receive state support for operations by the year 2002.

CSHB 3 would promote parental responsibility *but not require* parents to buy coverage through the corporation. Many parents want to buy health coverage for their children but cannot afford its cost. They would rather pay health insurance than risk huge emergency room and other medical bills that could devastate their future. The corporation also would be authorized to develop premium structures that varied according to ability to pay, including requiring parents to pay full cost, so that private donations were used only to assist families in financial need.

Parents under court order to provide medical support would not be ordered to provide coverage through the corporation unless they were unable to purchase coverage through the private marketplace. The premium

stabilization account could assist parents who were temporarily unable to pay court-ordered support. CSHB 3 also would help Texas comply with new federal welfare reform measures that require medical support orders and special procedures to ensure employer notification.

State appropriations to launch the program would be offset by Medicaid savings. An estimated 107,000 children will be uninsured in 1998 because their non-custodial parents have no insurance or are unable to afford insurance; about 72,000 of those children would be eligible for Medicaid. However, many of these children could instead be covered by a noncustodial parent through a Healthy Kids plan, generating an estimated savings in Medicaid funds from general revenue of about \$6.7 million for the biennium. Net savings to the state through August 1999 would amount to \$207,500 after start-up costs were deducted.

There is no evidence proving that employers drop employee health benefits when public or public/private benefits become available. Employers who can afford to do so provide health benefits to attract qualified employees; CSHB 3 would provide alternatives for families whose employers cannot afford employee benefits, usually employees of small and service-related businesses.

Tax breaks and exemptions from mandates would be used as incentives to encourage insurers and HMOs to participate in Healthy Kids plans. The state now receives no premium or HMO tax revenue on uninsured children. Any loss of potential tax revenues would be minimal because taxes are based on a company's total volume of business, of which children's health benefit plans would probably constitute only a very small portion. Through its oversight function, the corporation would make sure that exempting providers from mandates would not result in inadequate benefit plans.

Allowing state agencies to exchange pertinent information would help the state reduce costs and duplication and recover Medicaid costs on children whose parents can purchase insurance. Parental and child information would be subject to strong confidentiality protections; no information could be released outside of agency purview without the written consent of the parent or guardian.

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CSHB 3 would not dilute the state's responsibility for meeting health care needs nor would it tie the hands of future legislatures. CSHB 3 would prohibit service reductions in state or state/federal health programs because of services provided through the corporation and would continue the state's efforts to meet the needs of children and low-income families. Since those needs usually exceed available services and funding, program savings could be used to serve eligible, but now unserved, individuals and families.

OPPONENTS SAY:

CSHB 3 would create a new state bureaucracy and public benefit program that could continue to grow in an already bloated state government. The bill contains no guarantee that once coverage was made available parents would buy it, or that the pool would be sufficiently large and composed of mostly healthy children to counterbalance the costs of covering care for high risk and unhealthy uninsured children.

There are other ways of fostering health coverage for uninsured children that would not require establishing a governor-appointed board and involving the comptroller and state auditor and new state appropriations. For example, the state could grant employers financial incentives to provide dependent coverage for employees. Even a state-funded voucher system would be less bureaucratic than the corporation envisioned by CSHB 3.

Funding the existing but inadequate state high risk pool might be a better next step to meet the needs of many Texas families whose children are uninsured because of health conditions. If *uninsurable* children were enrolled in Healthy Kids plans instead of in the high risk pool, costs could exceed premium revenues and other funds and place a huge financial liability on the state. Texas should require that uninsurable kids be referred to a high risk pool.

Tax breaks and exemptions from benefit mandates should be offered to *all* insurers and HMOs. This strategy would prevent the need for a special public/private corporation and, by allowing HMOs and insurers to create new product lines, to meet the varying needs and incomes of Texas families. It also would create a marketplace in which all insurers and HMOs would be subject to the same rules.

The availability of health benefits through the Texas Healthy Kids Corporation would reduce employers' incentive to provide employee and dependent health benefits; some might drop benefits knowing that employees could seek coverage through the corporation. Individuals formerly insured under a private employer-based insurance or HMO plan would create a greater demand on the public/private program and, therefore, a greater burden on generous private benefactors or on the state.

The authority of the corporation as provided by CSHB 3 would be too broad. It is possible that under the corporation's standards most children in Texas could be considered inadequately covered by health benefits and eligible for Healthy Kids program coverage. This would increase demand on state dollars and decrease the sales of privately funded insurance and HMO coverage. Also, the providers chosen by the corporation could obtain a monopolistic hold on the market for children's health insurance. Also, allowing the corporation to exchange information with other state agencies could be an invasion of privacy and be used by the corporation to target specific individuals or families for coverage.

**OTHER
OPPONENTS
SAY:**

Tax exemptions are an unnecessary incentive for insurers and HMOs. By promoting access to a large, mostly healthy, pool of children, CSHB 3 would help generate increased revenues and profits for these providers. Furthermore, the fiscal note does not include any calculation of premium and HMO taxes that would be lost to the state. The Legislature is now debating statewide tax restructuring, and the state budget contains a \$4.2 billion "wish list" of activities needing more funding. This is no time to be granting new tax exemptions.

A tax exemption could even be viewed as a bonus to carriers, since they should have been providing affordable health benefits for children all along. High risk and other insurance pools across the country are removing or deciding not to use tax exemptions or tax credits as incentives for providers to participate.

CSHB 3 would further segment an already fragmented market. Texas already has the Texas Insurance Purchasing Alliance (TIPA), a special nonprofit organization whereby small businesses can purchase coverage, a huge self-insured market that is largely unregulated, and a statutorily

established high risk pool that is unfunded. Making a special health benefit program for children, complete with rules and exemptions, would further segment the market and make it difficult to pool a variety of individual risks. There are about 4.5 million people in Texas who do not have health insurance; the Legislature should take a broader approach to solving this problem, such as building onto the existing TIPA or Employee Retirement System infrastructure and plans.

The Texas Health Kids Corporation should be required to consider the impact its eligibility criteria could have on other health plan coverage so as to minimize any negative effect on the private market. The corporation also should be required to develop a premium structure that varies according to the participant's ability to pay.

The non-profit corporation should not be listed as an exempt organization under 501(c)4 of the federal Internal Revenue Code (26 U.S.C.), because this section imposes fewer restrictions on lobbying and campaign contributions. The Texas Healthy Kids Corporation should be listed only under section 501(c)3 of the Internal Revenue Code to ensure that all revenues and funds would be used for program purposes.

Allowing nonprofit hospitals to donate funds to the corporation as part of their tax-exempt duties would dilute their responsibility to provide charity care to others in the community. Hospitals, for example, could donate a sufficient amount of money to absolve themselves from providing care to uninsured or underinsured adults or children not covered by the corporation or other plans.

The bill would prevent the state from reducing services in other state or state/federal programs as a result of those provided by Healthy Kids Corporation. The state should not be bound in this fashion, especially if the public/private venture successfully offers needed and appropriate coverage at reduced state costs.

Requiring courts to order health benefit coverage through the corporation could be risky. Even though the corporation would review children for program eligibility, the health and number of children enrolled may overload a fledgling benefit program. Also, if the Healthy Kids program

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proved to be unsuccessful, many families would have to go through court proceedings again to amend medical support orders.

NOTES: The committee substitute made the following changes to the bill as filed: made the corporation subject to state audits, open meetings and records laws and liability laws governing nonprofit charitable organizations; increased oversight by the insurance commissioner; included on the board the Attorney General's Office as the state's Title IV-D child support enforcement agency; authorized the corporation to use nonprofit hospital donations; authorized the corporation to implement plans in specified regions rather than statewide; specified program coverage would be secondary to any other private coverage; authorized the corporation to restrict eligibility and develop a marketing plan; authorized the Texas Department of Health to purchase services through the program; prohibited service reductions in CIDC and other TDH programs because of services through the Healthy Kids Corporation; specified court determinations and employer responsibilities in medical support orders; and established the premium stabilization revolving account.

Related bills include HB 710 by Averitt, which would amend statutes governing the Texas Health Insurance Risk Pool, and HB 3267 by Wohlgemuth, which would exempt issuers of children's health benefit plans from mandated benefit provisions and premium or HMO taxes. HB 710 is pending in the House Calendars Committee; HB 3267 has been referred to the Insurance Committee.