

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3
By: Berlanga (Sibley)
Economic Development
4-28-97
Committee Report (Substituted)

DIGEST

Currently, approximately 1.3 million children under age 18 have no health insurance. Between 1980 and 1990, employer coverage for dependents in Texas declined from 50 percent to 33 percent. This bill would create the nonprofit 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 benefits plans. Additionally, this bill would authorize the corporation to receive private financial donations, including donations from nonprofit hospitals.

PURPOSE

As proposed, C.S.H.B. 3 establishes the Texas Healthy Kids Corporation and provides for health benefit coverage for children of the State of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the initial board of directors of the Texas Healthy Kid Corporation in SECTION 1 (Section 109.033(d)(1), Health and Safety Code); to the comptroller in SECTION 1 (Section 109.153(b), Health and Safety Code); to the board of directors of the Texas Healthy Kids Corporation in SECTION 1 (Section 109.154(d), Health and Safety Code); to the Texas Health and Human Services Commission in SECTION 2 (Section 154.182(c), Family Code); and to the commissioner of insurance in SECTION 4 (Article 27.06, Insurance Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2E, Health and Safety Code, by adding Chapter 109, as follows:

CHAPTER 109. TEXAS HEALTHY KIDS CORPORATION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 109.001. DEFINITIONS. Defines "board," "child," "corporation," "eligible coverage provider," "executive director," "program," and "Title IV-D agency."

Sec. 109.002. TEXAS HEALTHY KIDS FUND. Provides that the Texas healthy kids fund (fund) is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Sets forth the composition of the fund. Requires the comptroller to transfer to the fund money appropriated to the fund from the state treasury. Authorizes the comptroller to invest money in the fund in the same manner as the comptroller may invest money in the state treasury. Requires the board of directors (board) of the Texas Healthy Kids Corporation (corporation) to file with the comptroller a verified copy of a board resolution that designates the authorized representatives of the corporation who have authority to spend money in the fund. Requires the comptroller, in the first fiscal year for which the fund does not receive a direct state appropriation of state money and at the request of the board, to transfer the balance of the fund to one or more depositories selected by the board as depositories for the corporation. Provides that the fund is abolished on the date a transfer is made under this subsection.

Sec. 109.003. BIENNIAL REPORT. Requires the corporation to submit a written report to the governor, the lieutenant governor, the speaker of the house of representatives, and the

commissioner of insurance (commissioner) by January 1 of each odd-numbered year. Requires the report to state the program's status and to include a statement of the corporation's financial condition and an accounting for the corporation's administrative expenses for the two years preceding the date of the report. Provides that the reporting requirement under this section only applies during certain periods.

Sec. 109.004. IMMUNITY FROM LIABILITY. Provides that Chapter 84, Civil Practice and Remedies Code, applies to the corporation and an employee or volunteer of the corporation.

SUBCHAPTER B. CORPORATE STRUCTURE

Sec. 109.031. TEXAS HEALTHY KIDS CORPORATION; PURPOSE. Provides that the Texas Healthy Kids Corporation is created and has the powers that are necessary and proper to carry out its duties. Provides that the corporation is a nonprofit corporation and shall comply with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.). Provides that the primary purpose of the corporation is to provide health benefits for primary and preventive health care for children. Provides that the corporation is not subject to the franchise tax imposed by Chapter 171, Tax Code. Requires the board to take any step necessary to maintain an exemption from certain federal income taxes.

Sec. 109.032. BOARD OF DIRECTORS; PRESIDING OFFICER. Requires the corporation to operate subject to the general supervision of a board of directors. Provides that the board and the presiding officer of the board are selected as provided by the articles of incorporation and bylaws of the corporation, in accordance with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.). Authorizes the board, if required by the bylaws, to include certain persons as voting ex officio members. Prohibits a member of the board from serving more than two terms. Provides that a person is not eligible to serve on the board if the person or the person's spouse is employed by, represents in any capacity, owns, or controls any ownership interest in a certain business or organization. Provides that a person is not eligible to serve on the board if the person is or has been an adverse party in litigation against the board or corporation.

Sec. 109.033. POWERS AND DUTIES OF BOARD; OVERSIGHT OF COMMISSIONER OF INSURANCE. Provides that the board is the oversight and governing entity of the corporation and has any power necessary and proper to carry out its duties under this chapter. Provides that the board has complete fiscal control over the corporation and is responsible for all corporate operations. Authorizes the board to request and accept grants and gifts of money, property, or services. Authorizes the corporation to use a grant or gift for any purpose of the corporation. Authorizes the corporation to use a donation made as community benefits by a hospital or hospital system under Section 171.063(a), Tax Code, only to purchase health benefits for certain children. Requires the initial board to submit to the commissioner for approval and may not implement before receiving that approval the corporation's bylaws, plan of organization, and any other standards adopted by the board; and the health benefit program and health benefit plans established by the corporation under Subchapter C.

Sec. 109.034. EXECUTIVE DIRECTOR. Requires the board to employ an executive director to help the board perform its duties. Requires the director to act on behalf of and subject to authorization and supervision of the board to carry out the purposes of the corporation. Requires the corporation to pay the director a salary in an amount established by the board. Requires the director to make and file a surety bond in an amount determined by the board for the faithful performance of the executive director's duties and the proper safekeeping and disbursement of corporate money.

Sec. 109.035. EMPLOYEES; CONSULTANTS. Authorizes the director to employ employees and retain consultants as necessary to administer the programs of the corporation.

Sec. 109.036. PUBLIC INPUT. Requires the board to develop and implement policies that

provide the public with a reasonable opportunity to appear before the board and to speak on any issue related to the corporation or the program.

Sec. 109.037. OPEN MEETINGS; OPEN RECORDS. Provides that the board and the corporation are subject to the open meetings law, Chapter 551, Government Code, and the open records law, Chapter 552, Government Code, subject to Section 109.064, during certain periods.

Sec. 109.038. COOPERATION OF AND ASSISTANCE TO STATE AGENCIES. Requires a health and human services agency, the Department of Insurance (department), the Title IV-D agency, the board of directors of the risk pool established under Article 3.77, Insurance Code, and the comptroller to cooperate with the corporation to assist the corporation in performing its duties. Requires the corporation to work with the Title IV-D agency, the Department of Human Services, and the Department of Health (TDH) to facilitate the electronic exchange of information among the corporation and the agencies that relate to certain individuals. Requires the corporation to work with the board of directors of the risk pool established under Article 3.77, Insurance Code, to implement Section 109.067.

Sec. 109.039. AUDIT BY STATE AUDITOR. Provides that the corporation is subject to audit by the state auditor under Chapter 321, Government Code, only during certain periods. Authorizes the audit to include a financial audit and an economy and efficiency audit.

SUBCHAPTER C. HEALTH BENEFIT PROGRAM

Sec. 109.061. HEALTH BENEFIT PROGRAM. (a) Requires the corporation to establish, develop, and promote a program to provide health benefits for certain children.

(b) Authorizes the board to contract for or otherwise obtain third-party administrative services for the corporation.

(c) Authorizes the corporation, in developing the health benefit program (program), to consult with TDH, appropriate professional organizations, coverage providers, other agency officials, and consultants. Requires the corporation to consult with the Title IV-D agency, in matters relating to coverage for children who are the subject of a medical child support order and for whom the agency is providing enforcement services.

(d) Authorizes the corporation to establish group coverage plans for children under the program in specified geographic regions of the state or based on other criteria approved by the commissioner.

(e) Provides that the parent, managing conservator, or guardian of a child, or another person sponsoring coverage for the child, is responsible for premiums for coverage under the program and for applicable copayments, coinsurance, or deductions, as determined by the corporation. Authorizes the corporation to develop a premium structure that varies according to ability to pay and to require, in accordance with the premium structure, that the parent, conservator, guardian, or sponsor pay the full cost of the child's coverage.

(f) Authorizes the corporation to require that the parent, managing conservator, or guardian of a child, or another person sponsoring coverage for the child, pay to the corporation a reasonable enrollment fee, in an amount set by the corporation, before the child is enrolled in coverage under the program.

(g) Provides that the health benefit coverage provided under the corporation's program is secondary to any other available private coverage covering a child. Requires the corporation to ensure that benefits provided by the program are the payor of last resort with respect to private coverage covering a child.

(h) Requires the corporation, in developing the eligibility criteria under Subsection (a)(3), to consider the impact of the eligibility criteria on the availability of other health benefit

plan coverage for children. Requires the corporation to restrict eligibility for coverage under the program or impose a waiting period or other appropriate restriction to minimize any adverse impact on the availability of other health benefit plan coverage.

(i) Authorizes the board to develop a marketing plan under which each participating eligible coverage provider is required to market the program. Authorizes the corporation or eligible coverage providers to publicize the corporation and the general nature of the program. Requires a direct sale or solicitation of a health benefit plan offered through the program to be done in accordance with the Insurance Code and other insurance laws of this state.

Sec. 109.062. CORPORATE OPERATIONS; LICENSING REQUIREMENTS. Provides that the corporation is not an insurer and may not self-insure or self-fund the coverage provided through the program. Provides that the board and employees of the corporation are not agents of an insurer. Provides that the corporation, the board, and the employees of the corporation are not subject to any licensing requirement imposed under the Insurance Code or another insurance law of this state. Requires the corporation to use prudent business practice in the procurement of goods and services. Provides that a law governing the procurement of goods or services by a state agency applies only during a certain period.

Sec. 109.063. OPERATIONS OF ELIGIBLE COVERAGE PROVIDER. Requires an eligible coverage provider to meet certain conditions. Provides that a health benefit plan provider under the program is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit. Provides that an eligible coverage provider is not subject to certain taxes with respect to money received for coverage provided under this chapter. Prohibits the participation criteria for authorized insurers, health service organizations, health maintenance organizations, and other entities that provide coverage under the health benefit program from requiring that an eligible coverage provider provide benefits in a school-based clinic.

Sec. 109.064. ACCESS TO RECORDS; CONFIDENTIALITY. Authorizes the corporation to obtain the medical records of and other information relating to a child covered by the program or applying to be covered by the program on receipt of the informed written consent of the child's parent, managing conservator, or guardian. Provides that information in the possession of the corporation that identifies an individual is confidential and exempt from disclosure and discovery in a civil action. Prohibits the corporation or an employee or agent of the corporation from releasing confidential information to any person without the written consent of a parent, managing conservator, or guardian of the participating child.

Sec. 109.065. GRIEVANCES AND APPEALS. Requires the corporation to develop a plan for the receipt and consideration of complaints regarding participating eligible coverage providers to ensure appropriate delivery of health care services to participating children and to ensure that eligible coverage providers comply with any applicable complaint procedure imposed by law or the requirements of the corporation.

Sec. 109.066. TEXAS DEPARTMENT OF HEALTH PROGRAMS. Authorizes TDH to use appropriated funds to purchase coverage under a health benefit plan provided through the program for children who are eligible for coverage for the program under certain conditions. Prohibits services provided to children under a federally funded or state-funded program administered by TDH from being reduced or eliminated because some or all of the services are provided through the program or otherwise provided because of the establishment of the corporation or the program.

Sec. 109.067. AVAILABILITY OF RISK POOL MANAGEMENT. Requires the corporation to notify the parent, managing conservator, or guardian of a child who applies for coverage through the program of the availability of coverage from the risk pool established under Article 3.77, Insurance Code.

Sec. 109.068. PROGRAM NOT AN ENTITLEMENT. Provides that this chapter does not

establish an entitlement to health benefits provided through the corporation or any other entitlement.

SUBCHAPTER D. COVERAGE UNDER ORDER OF MEDICAL SUPPORT FOR CHILD

Sec. 109.101. APPLICATION. Requires a party ordered under Chapter 154, Family Code, to apply for coverage for a child under the program to provide to the corporation a copy of the order rendered under Chapter 154; and the name and address of the obligor's employer.

Sec. 109.102. DUTIES OF CORPORATION OR DESIGNEE OF CORPORATION. Requires the corporation or the designee of the corporation to review an applicant and, if the corporation or designee finds that the child is eligible for coverage under the program, to issue coverage to the child in accordance with the program; and to notify the obligor's employer in accordance with Subsection (b). Sets forth the required contents of the notice provided under Subsection (a)(2). Requires the corporation or the corporation's designee to notify the employer of an obligor of any increase in the amount to be paid for coverage of the child under the program.

Sec. 109.103. DUTY OF EMPLOYER. Requires an employer who receives notice under Section 109.102 to withhold an appropriate amount from the obligor's earnings for the required payment and remit the amount as instructed on the notice. Provides that an employer who fails to withhold or remit payments as required by this section or who discriminates in hiring or employment on the basis of a medical support order is subject to the penalties and fines imposed under Subchapter C, Chapter 158, Family Code.

SUBCHAPTER E. ELIGIBILITY OF CERTAIN CHILDREN; STABILIZATION FUND

Sec. 109.151. TERMINATION FOR FAILURE TO PAY PREMIUMS. Requires the corporation to terminate the coverage of a child for failure to pay a premium as required under Section 109.061(e).

Sec. 109.152. PREMIUM STABILIZATION REVOLVING ACCOUNT. Provides that the premium stabilization revolving account (account) is an account within the fund. Sets forth the composition of the account.

Sec. 109.153. FEE; DEPOSIT TO ACCOUNT. Requires the corporation to charge for each child covered under the program a reasonable premium stabilization revolving account fee, not to exceed \$5 each month. Requires the corporation to remit money collected under this section to the comptroller, in accordance with rules adopted by the comptroller, for deposit to the credit of the account.

Sec. 109.154. USE OF MONEY IN ACCOUNT. Authorizes money in the account to be used by the corporation only to pay a premium for coverage provided through the program for a child for whom a premium is not paid in accordance with Section 109.061(e). Prohibits a premium from being paid for a child who is covered by a health benefit plan other than the plan offered by the corporation. Requires the corporation to determine the period for which premiums may be paid from the fund and the circumstances under which the premiums may be paid. Provides that the parent, managing conservator, or guardian of a child for whom a premium is paid from the account, or another person sponsoring coverage for the child, remains responsible for reimbursing the account for the premium paid. Provides that the coverage for the child is subject to termination, in accordance with criteria adopted by the board, if the parent, managing conservator, guardian, or sponsor fails to reimburse the account as required by this subsection. Requires the corporation to remit money collected under this subsection to the comptroller for deposit to the credit of the account.

SECTION 2. Amends Section 154.182, Family Code, by amending Subsection (b) and by adding Subsection (c), as follows:

(b) Requires a court, in determining the manner in which health insurance for the child is to be ordered, to render its order in accordance with the following priorities, among others, unless a party shows good cause why a particular order would not be in the best interest of the child: if health insurance is not available for the child under Subdivision (1), (2), or (3), the court shall order the obligor to apply for coverage through the corporation established under Chapter 109, Health and Safety Code; or if health coverage is not available for the child under Subdivision (1), (2), (3), or (4), the court shall order the obligor to pay the obligee a reasonable amount each month as medical support for the child to be withheld from earnings under Chapter 158. Makes conforming changes.

(c) Requires a court, in establishing the amount of additional medical child support under Subsection (b)(5), to presume that \$38 each month is reasonable amount for a child but may order a greater or lesser amount as appropriate under the circumstances. Authorizes the Health and Human Services Commission to promulgate guidelines for the dollar amounts of medical support that the court may presumptively apply in circumstances in which the obligor is responsible for medical child support for more than one child.

SECTION 3. Amends Section 171.063(a), Tax Code, to authorize a requirement that a nonprofit hospital provide charity care and community benefits under this section to be satisfied by a donation of money to the corporation established by Chapter 109, Health and Safety Code, provided that the money is donated to be used for a purpose described by Section 109.033(c), Health and Safety Code; and no more than 10 percent of the charity care required under any provision of this subsection may be satisfied by the donation.

SECTION 4. Amends the Insurance Code, by adding Chapter 27, as follows:

CHAPTER 27. HEALTH BENEFIT PLANS FOR CHILDREN

Art. 27.01. DEFINITION. Defines "health benefit plan."

Art. 27.02. SCOPE OF CHAPTER. Provides that this chapter applies to certain health benefit plans.

Art. 27.03. CHILDREN'S HEALTH BENEFIT PLAN. Authorizes the issuer of a health benefit plan to offer a children's health benefit plan in accordance with this chapter. Authorizes the health benefit plan to provide coverage only to children younger than 18 years of age. Prohibits an issuer of a health benefit plan from offering a children's health benefit plan under this chapter unless the plan's structure and the benefits offered under the plan have been approved by the commissioner.

Art. 27.04. MANDATED BENEFIT PROVISIONS INAPPLICABLE. Provides that a children's health benefit plan is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Art. 27.05. EXEMPTION FROM PREMIUM TAX. Provides that the issuer of a children's health benefit plan is not subject to a certain tax.

Art. 27.06. RULES. Authorizes the commissioner to adopt rules to implement this chapter.

SECTION 5. (a) Sets forth the initial compositions of the board, notwithstanding Section 109.032, Health and Safety Code.

(b) Requires the governor to appoint the members of the board appointed under Subsection (a)(1) of this section as soon as practical after the effective date of this Act. Provides that the terms of those members expire on September 1, 1999.

(c) Requires the governor, on expiration of the terms of the initial appointed members of the board, to appoint four members for terms expiring September 1, 2001, and two of the formerly appointed positions shall be filled as provided by the articles and bylaws of the

corporation.

(d) Requires the governor, on expiration of the terms of the four members appointed under Subsection (c), to appoint two members to serve terms expiring September 1, 2003. Requires the two other positions of the formerly appointed members to be filled as provided by the articles and bylaws of the corporation.

(e) Requires all members of the board, after September 1, 2003, to be selected as provided by Section 109.032, Health and Safety Code, as added by this Act.

(f) Provides that a person is not eligible for appointment by the governor to the board under this section if the person does not satisfy the requirements of Section 109.032, Health and Safety Code, as added by this Act.

(g) Requires the members of the board to annually elect a member to serve as the presiding officer of the board.

(h) Provides that the members of the board appointed by the governor serving under this section serve without compensation, but are entitled to reimbursement of their travel expenses as provided for in the General Appropriations Act for state board or commission members. Authorizes money appropriated to the department, the Health and Human Services Commission, or the Title IV-D agency to be spent, consistent with the General Appropriations Act, in connection with the work or expenses of the ex officio members of the initial board.

(i) Provides that this section expires September 1, 2003.

SECTION 6. (a) Requires the commissioner, acting as incorporator, by the 60th day after the effective date of this Act, to take the steps necessary to create the Texas Healthy Kids Corporation as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) Requires the commissioner, by the 90th day after the effective date of this Act, acting on behalf of the corporation, to employ an acting executive director for the corporation. Authorizes the acting executive director to develop a proposed business plan for the corporation; to solicit alternative funding for the corporation and for the health benefit plan program to be established by the corporation; and to develop, to the extent possible, a proposed health benefit plan program for the consideration of the board.

(c) Authorizes the commissioner, on behalf of the corporation, to accept grants and gifts of money, property, or services to assist the acting executive director appointed under Subsection (b) of this section in carrying out the acting executive director's powers. Provides that the commissioner's authority under this section expires on the date all of the appointed members of the board of the corporation have been appointed by the governor and have qualified for office.

(d) Provides that the acting executive director appointed under this section serves until the earlier of the date the acting executive director is dismissed by the commissioner; the date the acting executive director is dismissed by the board of the corporation; or the date the board of the corporation employs an executive director for the corporation.

(e) Prohibits the commissioner from employing an acting executive director on or after the date all of the appointed members of the board of the corporation have been appointed and have qualified for office.

SECTION 7. (a) Requires the corporation to offer an initial health benefit plan under Chapter 109, Health and Safety Code, as added by this Act, by the first anniversary of the effective date of this Act.

(b) Requires the board of the corporation, by the date the corporation first offers a health

benefit plan in accordance with Subsection (a), to establish general administrative and accounting procedures for the corporation; to develop the design and benefits structure of any health benefit plan that may be offered by the corporation through eligible coverage providers in accordance with Chapter 109, Health and Safety Code, as added by this Act; and to develop a plan for the receipt and consideration of complaints as required by Section 109.065, Health and Safety Code.

(c) Requires the board of the corporation to determine whether it is feasible, considering the resources available, to initially offer the health benefit plan required under Chapter 109, Health and Safety Code, as added by this Act, in each region of the state. Requires the board, under certain conditions, to develop and the corporation to implement a schedule to stagger implementation of the health benefit program in different regions of the state.

SECTION 8. Makes application of Chapter 27, Insurance Code, as added by this Act, prospective to January 1, 1998.

SECTION 9. Prohibits a court from ordering that coverage be provided to a child through the corporation under Section 154.182, Family Code, as amended by this Act, before the date that the corporation first offers coverage under a health benefit plan in the applicable region of the state.

SECTION 10. Requires the Title IV-D agency, as soon as practicable after the effective date of this Act, to seek the modification of child support orders that are enforced by the agency and to which Section 154.182(b)(5), Family Code, as added by this Act, applies to obtain additional medical child support under that subdivision.

SECTION 11. (a) Effective date: upon passage.

(b) Effective date of Section 171.063(a), Tax Code, as amended by this Act: January 1, 1998.

SECTION 12. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

Page 29, line 26, strikes "a" and substitutes "an initial."

Page 31, line 3, inserts "in the applicable region of the state" between "plan" and "."

Amendment 2.

Page 12, line 25, strikes "may" and substitutes "shall."