LEGISLATIVE BILL 358

Approved by the Governor May 26, 2009

Introduced by Pahls, 31.

FOR AN ACT relating to the Comprehensive Health Insurance Pool Act; to amend sections 44-4201, 44-4226, and 44-4227, Reissue Revised Statutes of Nebraska, and sections 44-4221 and 44-4222, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to eligibility under the act, unfair trade practices, major medical expense coverage, and premium and standard risk rates; to provide duties for the board of directors of the pool; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-4201, Reissue Revised Statutes of Nebraska, is amended to read:

44-4201 Sections 44-4201 to 44-4235 and sections 2, 3, and 6 of this act shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Sec. 2. Following the close of each calendar year, the board shall conduct a review of the operation of the pool and report to the director the board's recommendations for cost savings in the operation of the pool.

Sec. 3. (1)(a) In addition to the requirements of section 2 of this act, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the administering insurer to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the administering insurer which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the administering insurer and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the administering insurer to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money

owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage. Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Sec. 4. Section 44-4221, Revised Statutes Cumulative Supplement, 2008, is amended to read:

44-4221 (1) To be eligible to purchase ~~health insurance coverage from the pool,~~ pool coverage, an individual shall:

(a) Be a resident of the state for a period of at least six months and shall be an individual:

(i) Who is not eligible for coverage under a group health plan comparable to pool coverage, medicare by reason of age, or medical assistance pursuant to the Medical Assistance Act or section 43-522, or any successor program, and who does not have any other health insurance coverage comparable to pool coverage;

(ii) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage; and

~~(i) Have~~ (iii)(A) Who has received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer for health insurance coverage comparable to pool coverage;

~~(ii) Currently have,~~ (B) Who currently has, or ~~have~~ has been offered within six months prior to application to the pool, health insurance coverage comparable to pool coverage by an insurer which includes a restrictive rider which limits health insurance coverage for a preexisting medical condition; or

~~(iii) Have~~ (C) Who has been refused health insurance coverage comparable to ~~the~~ pool coverage, or ~~have~~ has been offered ~~such~~ health insurance coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool;

(b) Be a resident of the state for any length of time and be an individual:

(i) For whom, as of the date the individual seeks pool coverage under this section, the aggregate of the periods of creditable coverage is eighteen or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(ii) Who is not eligible for coverage under a group health plan, medicare, or medical assistance pursuant to the Medical Assistance Act or section 43-522, or any successor program, and who does not have any other health insurance coverage;

(iii) With respect to whom the most recent prior creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

~~(iv)(A)~~ (iv) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage; or~~, or (B) who had been offered the option of continuation coverage under COBRA or under a similar program at a premium rate higher than that available from the pool; or~~

(c) Be a resident of the state for any length of time and be a qualified trade adjustment assistance eligible individual.

(2) The board may adopt and promulgate a list of medical or health conditions for which an individual would be eligible for pool coverage without applying for health insurance coverage pursuant to subdivision (1)(a) of this section. Individuals who can demonstrate the existence or history of any medical or health conditions on the list adopted and promulgated by the board shall be eligible to apply directly to the pool for ~~health insurance~~ pool coverage.

Sec. 5. Section 44-4222, Revised Statutes Cumulative Supplement, 2008, is amended to read:

44-4222 (1) An individual shall not be eligible for initial or continued pool coverage if:

(a) He or she is eligible for medicare benefits by reason of age or medical assistance established pursuant to the Medical Assistance Act;

(b) He or she is a resident or inmate of a correctional facility, except that this subdivision shall not apply if such individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221;

(c) He or she has terminated pool coverage unless twelve months have elapsed since such termination, except that this subdivision shall not apply if such individual has received and become ineligible for medical assistance pursuant to the Medical Assistance Act during the immediately preceding twelve

months, if such individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221, or if such individual is eligible for waiver of any waiting period or preexisting condition exclusions pursuant to section 44-4228;

(d) The pool has paid out one million dollars in claims for the individual; ~~or~~

(e) He or she is no longer a resident of Nebraska; or~~.~~

(f) The premium for his or her pool coverage is paid for by a person other than the following:

(i) The individual;

(ii) An individual related to the individual by blood, marriage, or adoption; or

(iii) An entity operating under the federal Ryan White HIV/AIDS Treatment Modernization Act of 2006, Public Law 109-415, as such act existed on the effective date of this act.

(2) Pool coverage shall terminate for any individual on the date the individual becomes ineligible under subsection (1) of this section.

Sec. 6. (1) No insurer, agent, broker, or third-party administrator shall refer an individual employee to the pool or arrange for an individual employee to apply for pool coverage for the purpose of separating that individual employee from group health insurance coverage in connection with the individual employee's employment.

(2) Any violation of this section shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Sec. 7. Section 44-4226, Reissue Revised Statutes of Nebraska, is amended to read:

44-4226 (1) The pool shall offer major medical expense coverage to every eligible individual. The pool coverage, its schedule of benefits, and exclusions and other limitations shall be established through rules and regulations adopted and promulgated by the director taking into consideration the advice and recommendations of the members.

(2) In establishing the pool coverage, the director shall take into consideration the levels of individual health insurance coverage provided in the state and such medical economic factors as may be deemed appropriate and shall determine benefit levels, deductibles, coinsurance and stop-loss factors, exclusions, and limitations determined to be generally reflective of and commensurate with individual health insurance coverage provided by the ~~five~~ ten insurers writing the largest amount of individual health insurance coverage in the state.

(3) Pool coverage established under this section shall provide both an appropriate high and low deductible to be selected by the pool applicant. The deductibles and coinsurance and stop-loss factors may be adjusted annually according to the medical component of the Consumer Price Index.

Sec. 8. Section 44-4227, Reissue Revised Statutes of Nebraska, is amended to read:

44-4227 ~~(1)~~ ~~Rates~~ (1)(a) For calendar years prior to January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices. Special rates shall be provided for children under eighteen years of age.

~~(2)~~ ~~The~~ (b) For calendar years prior to January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the five insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such five insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event five insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage. The annual premium rate established for pool coverage shall be one hundred thirty-five percent of rates established as applicable for individual standard risks, except that the annual premium rate established for pool coverage for children under eighteen years of age shall be sixty-seven and five-tenths percent of rates established as applicable for individual standard risks.

(2)(a) For calendar years beginning on and after January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices.

(b)(i) For calendar years beginning on and after January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the ten insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such ten insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event ten insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage.

(ii)(A) The annual premium rate established for pool coverage for calendar year 2010 (I) shall be one hundred forty percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(B) The annual premium rate established for pool coverage for calendar year 2011 (I) shall be one hundred forty-five percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(C) The annual premium rate established for pool coverage for calendar year 2012 and each calendar year thereafter (I) shall be one hundred fifty percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(3) The board shall not adjust or increase pool rates more than one time during any calendar year. All rates and rate schedules shall be submitted to the director for approval. The director shall hold a public hearing pursuant to the Administrative Procedure Act prior to approving an adjustment to or increase in pool rates.

Sec. 9. Original sections 44-4201, 44-4226, and 44-4227, Reissue Revised Statutes of Nebraska, and sections 44-4221 and 44-4222, Revised Statutes Cumulative Supplement, 2008, are repealed.