LEGISLATIVE BILL 391

Approved by the Governor March 29, 1985

Introduced by Wesely, 26; Chizek, 31; DeCamp, 40

AN ACT relating to insurance; to adopt the Comprehensive Health Insurance Pool Act; and to provide severability.

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

Section 1. This act shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Sec. 2. It is the purpose and intent of the Legislature to provide access to health insurance coverage at an affordable premium to all residents of Nebraska, including those persons denied insurance due to a preexisting medical condition or whose policy includes a restrictive rider limiting coverage for such a condition. The purpose of the Comprehensive Health Insurance Pool Act is to provide a mechanism to ensure the availability of health insurance to persons unable to purchase such insurance coverage for a preexisting medical condition either on an individual or group basis directly from an insurer. It is the intent of the Legislature that adequate levels of health insurance coverage be made available to residents of Nebraska who are otherwise considered uninsurable or who are underinsured due to a medical condition creating a high risk. It is the intent of the Comprehensive Health Insurance Pool Act to provide affordable insurance for persons with such medical conditions by making such health insurance coverage available.

Sec. 3. For the purposes of the Comprehensive Health Insurance Pool Act, unless the context otherwise requires, the definitions found in sections 4 to 15 of this act shall be used.

Sec. 4. Agent or insurance agent shall mean any person licensed as an insurance agent by the department and duly appointed and authorized by an insurer to solicit applications for insurance and to discharge such other duties as may be vested in or required of the agent by the insurer.

Sec. 5. Benefits plan shall mean the coverages to be offered by the pool to eligible persons meeting the requirements of section 21 of this act.

Sec. 6. Board shall mean the Board of Directors of the Comprehensive Health Insurance Pool.

Sec. 7. Department shall mean the Department of Insurance.

Sec. 8. Director shall mean the Director of

Insurance.

Sec. 9. Health insurance shall mean any hospital, surgical, or medical expense incurred policy, hospital service corporation plan contract, or health maintenance organization contract. Health insurance shall not include (1) accident only, disability income, hospital confinement indemnity, dental, or credit insurance, (2) coverage issued as a supplement to liability insurance, (3) Medicare or insurance provided as a supplement to Medicare, (4) insurance arising from worker's compensation provisions, (5) automobile medical payment insurance, (6) any other specific limited coverage, or (7) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy.

Sec. 10. Insurer shall mean any insurance company as defined by section 44-103, hospital service corporation formed pursuant to section 21-1509, or health maintenance organization as defined by section 44-3208 authorized to transact health insurance business in the State of Nebraska.

Sec. 11. Medicare shall mean coverage under parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. sections 1395 et seq., as amended.

Sec. 12. Member shall mean any insurer participating in the pool.

Sec. 13. Net loss shall mean the excess of incurred claims plus expenses over the sum of written and renewed premiums and other appropriate revenue.

Sec. 14. Plan of operation shall mean the plan of operation of the pool, including articles, bylaws, and operating rules, submitted by the board pursuant to section 18 of this act.

Sec. 15. Pool shall mean the Comprehensive Health Insurance Pool.

Sec. 16. There is hereby created a nonprofit entity to be known as the Comprehensive Health Insurance Pool. All insurers authorized to issue or provide health insurance in this state on or after the effective date of this act shall be members of the pool. The pool shall be managed by a board of directors composed of nine directors. The board shall at all times, to the extent possible, include at least one representative of a domestic insurance company, one representative of a domestic hospital service corporation plan, one representative of a health maintenance organization, and one representative of the general public. The director shall adopt and promulgate rules and regulations to establish eligibility and selection criteria for the representative of the general public.

Sec. 17. The director shall, prior to November 15, 1985, give notice to all insurers of the time and place for the initial organizational meetings of the pool. The

pool members shall select by December 31, 1985, the initial board of directors, except the representative of the general public who shall be appointed by the director. The board shall select one or more insurers to serve as administering insurer pursuant to section 23 of this act. The selection of the board of directors and the administering insurer shall be subject to the approval of the director.

If, by December 31, 1985, the board is not selected, the director shall appoint the initial board and appoint an administering insurer.

Sec. 18. The board shall submit to the department a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The director shall, after notice and hearing, approve the plan of operation if the plan assures the fair, reasonable, and equitable administration of the pool. The plan of operation shall become effective upon approval in writing by the director consistent with the date on which the coverage under the Comprehensive Health Insurance Pool Act is required to be made available. If the board fails to submit an acceptable plan of operation within one hundred eighty days after the appointment of the board or at any time thereafter fails to submit acceptable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the Comprehensive Health Insurance Pool Act pursuant to sections 84-901 to 84-917. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the board and approved by the director.

Sec. 19. In its plan the board shall:

(1) Establish procedures for the handling and accounting of assets and funds of the pool;

(2) Select an administering insurer in accordance with section 23 of this act;

(3) Establish procedures for the selection, replacement, term of office, and qualifications of the directors of the board and rules of procedures for the operation of the board;

(4) Establish procedures for the collection of assessments from all members to cover losses incurred or estimated to be incurred under the plan during the period for which the assessment is made; and

(5) Develop and implement a program to publicize the existence of the plan, the eligibility requirements, and the procedures for enrollment and to maintain public awareness of the plan.

Sec. 20. The board shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact the business of

health insurance and, in addition thereto, the power to carry out the provisions and purposes of the Comprehensive Health Insurance Pool Act, including the specific authority to:

(1) Enter into contracts as are necessary or proper, including the authority, with the approval of the director, to enter into contracts with similar pools from other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against pool members;

(3) Take such legal action as necessary to avoid the improper issuance of coverage provided by or through the pool;

(4) Establish appropriate rates and rate schedules, expense allowances, agents' solicitation and referral fees, claim reserves and formulas, and any other actuarial functions appropriate to the operation of the pool;

(5) Assess members of the pool at the end of each calendar year and make advance interim assessments as may be reasonable and necessary to provide for losses resulting from claims incurred under the act and for administrative, organizational, and interim operating expenses to assure the financial stability of the pool. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year. Assessments shall be due and payable within thirty days of receipt of the assessment notice;

(6) Issue policies of insurance in accordance with the requirements of the plan of operation and the act;

(7) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the pool;

(8) Borrow money to effectuate the purposes of the act. Any notes or other evidence of indebtedness of the pool not in default shall be legal investment for insurers and may be carried as admitted assets; and

(9) Enter into reinsurance agreements and establish rules, conditions, and procedures for reinsuring risks under the act.

Sec. 21. To be eligible to purchase health insurance from the pool, a person shall be a resident of the state for a period of at least six months and shall:

(1) Have received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer licensed in Nebraska;

(2) Currently have, or have been offered within

six months prior to application to the pool, health insurance coverage by an insurer which includes a restrictive rider which limits insurance coverage for a preexisting medical condition for a period of time exceeding twelve months; or

(3) Have been refused health insurance coverage comparable to the pool, or have been offered such coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool.

The board may adopt and promulgate a list of medical or health conditions for which a person would be eligible for pool coverage without applying for health insurance pursuant to this section. Persons 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 insurance coverage.

Sec. 22. (1) A person shall not be eligible for initial or continued coverage under the pool if:

(a) He or she is eligible for Medicare benefits or medical assistance established pursuant to sections 68-1018 to 68-1025 or is a resident or inmate of a correctional facility;

(b) He or she has terminated coverage in the pool, unless twelve months have elapsed since such termination;

(c) The pool has paid out five hundred thousand dollars in claims for the person; or

(d) He or she is no longer a resident of Nebraska.

(2) Coverage under the Comprehensive Health Insurance Pool Act shall terminate for any person on the date the person becomes ineligible under subsection (1) of this section.

(3) Any person whose health insurance coverage is involuntarily terminated for any reasons other than nonpayment of premium and who is not eligible for a conversion policy may apply for coverage under the Comprehensive Health Insurance Pool Act, but shall submit proof of eligibility pursuant to section 21 of this act. If such proof is supplied and if coverage is applied for under the act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period, the effective date of the coverage shall be the day following termination of the previous coverage. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under the prior health insurance coverage have been satisfied. The board may assess an additional premium of up to ten per cent for coverage provided under the act in this manner, notwithstanding the premium limitations stated in section 27 of this act.

Sec. 23. (1) The board shall select an insurer or insurers through a competitive bidding process to administer the pool. The board shall evaluate bids submitted on the basis of criteria established by the board which shall include:

(a) The insurer's proven ability to handle individual accident and health insurance;

(b) The efficiency of the insurer's claim-paying procedures;

(c) The insurer's estimate of total charges for administering the plan; and

(d) The insurer's ability to administer the pool in a cost-effective manner.

(2) The administering insurer shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service by an administering insurer, the board shall invite all insurers, including the current administering insurer, to submit bids to serve as the administering insurer for the succeeding three-year period. Selection of the administering insurer for the succeeding period shall be made at least six months prior to the end of the current three-year period.

Sec. 24. The administering insurer shall:

(1) Perform all eligibility verification functions relating to the pool;

(2) Establish a premium billing procedure for collection of premiums from insured persons on a periodic basis as determined by the board;

(3) Perform all necessary functions to assure timely payment of benefits to covered persons under the pool, including:

(a) Making available information relating to the proper manner of submitting a claim for benefits to the pool and distributing forms upon which submission shall be made; and

(b) Evaluating the eligibility of each claim for payment by the pool;

(4) Submit regular reports to the board regarding the operation of the pool. The frequency, content, and form of the reports shall be determined by the board;

(5) Following the close of each calendar year, report such income and expense items as directed by the board to the board and the department on a form prescribed by the director; and

(6) Be paid as provided in the plan of operation for its expenses incurred in the performance of its services to the pool.

Sec. 25. (1) Following the close of each calendar year, the board shall determine the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2) Each member's proportion of participation in the pool shall be determined annually by the board on the basis of annual statements and other reports deemed necessary by the board and filed with the department or with the board by the member.

(3) Each insurer's assessment shall be determined by multiplying the total net loss from operation of the pool by a fraction, the numerator of which equals that insurer's premium and subscriber contract charges for health insurance written and renewed in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges of insurers for health insurance written or renewed in the state during the preceding calendar year. Health insurance premiums and subscriber contract charges producing assessments that are less than an amount determined by the board to justify the cost of collection shall not be considered for the purpose of determining assessments.

(4) Any deficit incurred by the pool shall be recouped by assessments apportioned in the manner specified in subsection (3) of this section by the board among the members.

(5) If assessments exceed the net loss of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums.

(6) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (3) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency for four years. In the event an assessment which was previously abated or deferred is later recovered by the pool, the board shall credit such recovery against future assessments made against the other members of the pool who paid the assessment as a result of such abatement or deferral.

Sec. 26. (1) The pool shall offer major medical expense coverage to every eligible person. The coverage to be issued by the pool, 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 pool members.

(2) In establishing the pool coverage, the director shall take into consideration the levels of health insurance 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 provided by the five 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. 27. Premium rates charged for pool coverage may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. Rates shall directly relate to the coverage provided, risk experience, and expenses of providing the coverage. 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.

The pool 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. 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 initial annual premium rate established for pool coverage shall not be more than one hundred thirty-five per cent of rates established as applicable for individual standard risks. Subsequent annual rates shall be established to provide for the expected costs of claims, including recovery of prior losses, expenses of operation, investment income of claim reserves, and any other cost factors subject to the limitations described in this section. In no event shall pool rates exceed one hundred sixty-five per cent of rates applicable to individual standard risks, except as provided by subsection (3) of section 22 of this act. All rates and rate schedules shall be submitted to the director for approval.

Sec. 28. Except as provided by subsection (3) of section 22 of this act, pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of coverage as to any condition (1) which had manifested itself during the six-month period immediately preceding the effective date of coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (2) for which

medical advice, care, or treatment was recommended or received during the six-month period immediately preceding the effective date of coverage.

Sec. 29. Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance or insurance arrangement and by all hospital and medical expense benefits paid or payable under any worker's compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, or any state or federal law or program.

Sec. 30. The pool shall have a cause of action against a person insured by the pool for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a setoff against any amount recoverable under this section.

Sec. 31. Participation in the pool as members, the establishment of rates, forms, or procedures, or any other joint or collective action required by the Comprehensive Health Insurance Pool Act shall not be the basis of any cause of action, criminal or civil liability, or penalty against the pool or any of its members or the board of directors.

Sec. 32. The pool shall be exempt from any and all taxes assessed by the State of Nebraska.

Sec. 33. Any insurer subject to premium tax liability imposed by section 44-1213, 77-908, or 77-909 may offset assessments paid to the pool by such insurer in a calendar year against its tax liability.

Sec. 34. The pool shall be operational and shall provide health insurance to eligible persons no later than January 1, 1987.

After two years of operation of the pool, the board shall conduct a study of the claims loss experience of the pool and adjust the plan of operation and the benefits plan to reflect the findings of the study with the approval of the director. The board may also recommend amendments to the Comprehensive Health Insurance Pool Act to the Legislature to address the claims loss experience of the pool.

Sec. 35. On the date the Comprehensive Health Insurance Pool becomes operational as provided in section 34 of this act, every insurer licensed in Nebraska shall include a notice of the existence of the Comprehensive Health Insurance Pool in any rejection of an application for health insurance coverage for reasons of the health of the applicant.

Sec. 36. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.