

LEGISLATIVE BILL 1253

Approved by the Governor April 6, 2000

Introduced by Crosby, 29; Bohlke, 33; Bruning, 3; Byars, 30; Kristensen, 37;
Aguilar, 35

AN ACT relating to insurance; to amend sections 44-4202 to 44-4217, 44-4219 to 44-4222, 44-4224 to 44-4228, 44-4230, 44-5223, 44-5225, 44-5246.02, 44-6901, 44-6915, 44-6918, and 77-918, Reissue Revised Statutes of Nebraska, and sections 44-4233 and 77-912, Revised Statutes Supplement, 1999; to provide requirements for coverage of hospitalization and general anesthesia for dental care; to change provisions relating to the Comprehensive Health Insurance Pool; to create a fund; to change funding provisions relating to the pool; to define and redefine terms relating to the Small Employer Health Insurance Availability Act and health benefit plans; to require coverage for adopted children; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. (1) Notwithstanding section 44-3,131, (a) any employer group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any employer group hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for the reasonable cost of hospitalization and general anesthesia in order for a covered person to safely receive dental care if he or she is under eight years of age or is developmentally disabled.

(2)(a) This section does not prevent application of deductible or copayment provisions contained in the group policy, contract, or benefit plan or require that coverage under a group policy, contract, or benefit plan be extended to any other procedures, including dental care.

(b) This section does not prevent application of prior authorization requirements or other requirements of a managed care plan as established by the group policy, contract, or benefit plan, including a requirement that coverage under subsection (1) of this section shall be provided only through a contracted network of providers.

(3) For purposes of this section, the reasonable determination that hospitalization and general anesthesia are necessary for safe dental care shall be made by the entity providing coverage under subsection (1) of this section. Medical necessity shall be as defined by the group policy, contract, or benefit plan.

(4) For purposes of this section, hospital and hospitalization includes ambulatory surgical center and care at an ambulatory surgical center.

Sec. 2. Section 44-4202, Reissue Revised Statutes of Nebraska, is amended to read:

44-4202. 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~~ individuals ~~denied insurance coverage~~ 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~~ coverage to individuals 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~~ individuals with such medical conditions by making such health insurance coverage available.

Sec. 3. Section 44-4203, Reissue Revised Statutes of Nebraska, is amended to read:

44-4203. For the purposes of the Comprehensive Health Insurance Pool Act, ~~unless the context otherwise requires,~~ the definitions found in sections 44-4204 to 44-4215 shall be used.

Sec. 4. Section 44-4204, Reissue Revised Statutes of Nebraska, is amended to read:

44-4204. Agent or insurance agent ~~shall mean~~ means 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. Section 44-4205, Reissue Revised Statutes of Nebraska, is amended to read:

44-4205. Benefits plan ~~shall mean~~ means the coverages to be offered by the pool to eligible ~~persons~~ individuals meeting the requirements of section 44-4221.

Sec. 6. Section 44-4206, Reissue Revised Statutes of Nebraska, is amended to read:

44-4206. Board ~~shall mean~~ means the Board of Directors of the pool.

Sec. 7. Section 44-4206.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-4206.01. Church plan ~~shall mean~~ means a plan as defined under 29 U.S.C. 1002.

Sec. 8. Section 44-4206.02, Reissue Revised Statutes of Nebraska, is amended to read:

44-4206.02. (1) Creditable coverage ~~shall mean~~ means, with respect to an individual, coverage of the individual under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) ~~Part A or Part B of Title XVIII of the Social Security Act Medicare;~~

(d) Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., other than coverage consisting solely of benefits under section 1928 of the act, 42 U.S.C. 1396s;

(e) 10 U.S.C. 5501 et seq.;

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A state health benefits risk pool;

(h) A health plan offered under 5 U.S.C. 8901 et seq.;

(i) A public health plan as defined under regulations promulgated by the federal Secretary of Health and Human Services; and

(j) A health benefit plan under 22 U.S.C. 2504.

(2) Creditable coverage ~~shall~~ does not include any coverage that occurs before a significant break in coverage. For purposes of this section, a significant break in coverage ~~shall mean~~ means any period of sixty-three consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period shall be taken into account in determining a significant break in coverage.

(3) Creditable coverage ~~shall~~ does not include coverage consisting solely of coverage of excepted benefits as that term is defined in the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. 1191b, and regulations adopted pursuant to the act and in effect on April 19, 1998.

Sec. 9. Section 44-4207, Reissue Revised Statutes of Nebraska, is amended to read:

44-4207. Department ~~shall mean~~ means the Department of Insurance.

Sec. 10. Section 44-4208, Reissue Revised Statutes of Nebraska, is amended to read:

44-4208. Director ~~shall mean~~ means the Director of Insurance.

Sec. 11. Section 44-4208.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-4208.01. Governmental plan ~~shall mean~~ means a plan as defined under 29 U.S.C. 1002 and any plan maintained for its employees by the United States Government or by any agency or instrumentality of the United States Government.

Sec. 12. Section 44-4208.02, Reissue Revised Statutes of Nebraska, is amended to read:

44-4208.02. Group health plan ~~shall mean~~ means an employee welfare benefit plan as defined by 29 U.S.C. 1002 to the extent that the plan provides any hospital, surgical, or medical expense benefits to employees or their dependents, as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise.

Sec. 13. Section 44-4209, Reissue Revised Statutes of Nebraska, is amended to read:

44-4209. Health insurance ~~shall mean~~ means any hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. Health insurance ~~shall~~ does 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 workers' 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. 14. Section 44-4210, Reissue Revised Statutes of Nebraska, is amended to read:

44-4210. Insurer ~~shall mean~~ means any insurance company as defined in section 44-103 or health maintenance organization as defined in section 44-32,105 authorized to transact health insurance business in the State of Nebraska.

Sec. 15. Section 44-4211, Reissue Revised Statutes of Nebraska, is amended to read:

44-4211. Medicare ~~shall mean~~ means coverage under parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

Sec. 16. Section 44-4212, Reissue Revised Statutes of Nebraska, is amended to read:

44-4212. Member ~~shall mean~~ means any insurer participating in the pool.

Sec. 17. Section 44-4213, Reissue Revised Statutes of Nebraska, is amended to read:

44-4213. Net loss ~~shall mean~~ means the excess of incurred claims plus expenses over the sum of written and renewed premiums and other appropriate revenue.

Sec. 18. Section 44-4214, Reissue Revised Statutes of Nebraska, is amended to read:

44-4214. Plan of operation ~~shall mean~~ means the plan of operation of the pool, including articles, bylaws, and operating rules, submitted by the board pursuant to section 44-4218.

Sec. 19. Section 44-4215, Reissue Revised Statutes of Nebraska, is amended to read:

44-4215. Pool ~~shall mean~~ means the Comprehensive Health Insurance Pool.

Sec. 20. Section 44-4216, Reissue Revised Statutes of Nebraska, is amended to read:

44-4216. (1) 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 shall be members of the pool.

(2)(a) Prior to January 1, 2001, the ~~the~~ pool shall be managed by a board of directors composed of nine directors whose terms shall expire on December 31, 2000. The board shall at all times, to the extent possible, include at least two representatives of domestic insurance companies, one representative of a health maintenance organization, one representative of a health agency which is involved in advocating for ~~persons~~ individuals with special health care needs, 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 and for the representative of the health agency.

(b)(i) On and after January 1, 2001, the pool shall be managed by a board of directors composed of seven directors. Such board shall be selected by the director and shall be composed of four representatives of domestic insurers, one representative of health agencies which are involved in advocating for individuals with special health care needs, one representative of individuals eligible for pool coverage, and one representative of the general public.

(ii) With regard to the board as it is composed on and after January 1, 2001:

(A) The representative of health agencies shall not be a member of the board of directors, an officer, or an employee of an insurer;

(B) The representative of individuals eligible for pool coverage (I) shall not be a member of the board of directors, an officer, or an employee of an insurer and (II) shall be an individual who is eligible for pool coverage or who would be eligible for pool coverage if he or she were not otherwise eligible for other health coverage, or the spouse, parent, adult child, or guardian of such individual; and

(C) The representative of the general public (I) shall not be a member of the board of directors, an officer, or an employee of an insurer or of a health agency which is involved in advocating for individuals with special health care needs and (II) shall not be an individual who is qualified for selection as the representative of individuals eligible for pool coverage as provided in subdivision (2)(b)(ii)(B) of this section.

(iii) Recommendations of individuals for selection to the board as

it is composed on and after January 1, 2001, may be submitted to the director:

(A) From domestic insurers in the case of the representatives of domestic insurers;

(B) From health agencies which are involved in advocating for individuals with special health care needs in the case of the representative of health agencies; and

(C) From individuals eligible for pool coverage and from organizations which are involved in advocating for individuals eligible for pool coverage in the case of the representative of individuals eligible for pool coverage.

Sec. 21. Section 44-4217, Reissue Revised Statutes of Nebraska, is amended to read:

44-4217. The members shall select the board as it is composed prior to January 1, 2001, except the representative of the general public and the representative of the health agency who shall be appointed by the director. The director shall select the board as it is composed on and after January 1, 2001. The board shall select one or more insurers to serve as administering insurer pursuant to section 44-4223. The selection of the board as it is composed prior to January 1, 2001, and the selection of the administering insurer by the board prior to January 1, 2001, or after December 31, 2000, shall be subject to the approval of the director.

Sec. 22. Section 44-4219, Reissue Revised Statutes of Nebraska, is amended to read:

44-4219. In its plan of operation, 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 44-4223;

(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; and

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

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

Sec. 23. Section 44-4220, Reissue Revised Statutes of Nebraska, is amended to read:

44-4220. 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)(a) 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; and

(b) Enter into contracts, with the approval of the director, with any physician, hospital, or other person licensed or otherwise authorized in this state to furnish health care services for participating in an insurance arrangement as defined in section 44-4104;

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

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

~~(4) Establish~~ Subject to the requirements of section 44-4227, ~~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 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 and, with the approval of the director, refuse to renew all policy forms for a class of contract and offer a~~

conversion privilege to any ~~person insured by the pool~~ covered individual;

~~(7)~~ (6) Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, the policy and other contract design, and any other function within the authority of the pool;

~~(8)~~ (7) 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)~~ (8) Enter into reinsurance agreements and establish rules, conditions, and procedures for reinsuring risks under the act.

Sec. 24. Section 44-4221, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(ii) 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; or

(iii) 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; or

(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, ~~Part A or Part B of Title XVIII of the Social Security Act~~ medicare, or a ~~state plan under Title XIX of the Social Security Act~~ medical assistance pursuant to section 43-522 or sections 68-1018 to 68-1025, 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) 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 (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.

(2) The board may adopt and promulgate a list of medical or health conditions for which a ~~person~~ an individual would be eligible for pool coverage without applying for health insurance coverage pursuant to subdivision (1)(a) of this section. ~~Persons~~ 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 coverage.

Sec. 25. Section 44-4222, Reissue Revised Statutes of Nebraska, is amended to read:

44-4222. (1) A ~~person~~ An individual shall not be eligible for initial or continued pool coverage ~~under the pool~~ if:

(a) He or she is eligible for medicare benefits by reason of age or medical assistance established pursuant to sections 68-1018 to 68-1025;

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

(c) He or she has terminated pool coverage ~~in the pool~~ unless twelve months have elapsed since such termination, except that this subdivision shall not apply if such ~~person~~ individual has received and become ineligible for medical assistance pursuant to sections 68-1018 to 68-1025 during the immediately preceding twelve months, if such ~~person~~ individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221, or if such ~~person~~ 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 ~~person~~ individual; or

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

(2) ~~Coverage under the Comprehensive Health Insurance Pool Act~~

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

Sec. 26. Section 44-4224, Reissue Revised Statutes of Nebraska, is amended to read:

44-4224. 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~~ covered individuals 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~~ individuals, 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. 27. Section 44-4225, Reissue Revised Statutes of Nebraska, is amended to read:

44-4225. (1) Following the close of each calendar year, the board shall ~~determine~~ report the board's determination of the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The board shall distribute copies of the report to the director, the Governor, and each member of the Legislature.

(2) The Comprehensive Health Insurance Pool Distributive Fund is created. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, any premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the operation of and payment of claims made against the pool. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Funds held by the administering insurer as of December 31, 2000, shall be carried forward by the administering insurer for payment of claims, costs of operation, and any remaining refunds.

(3) The board shall make periodic estimates of the amount needed from the fund for payment of losses resulting from claims, including a reasonable reserve, and administrative, organizational, and interim operating expenses and shall notify the director of the amount needed and the justification of the board for the request.

(4) The director shall approve all withdrawals from the fund and may determine when and in what amount any additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool.

(5) No later than May 1, 2002, and each May 1 thereafter, after funding of the net loss from operation of the pool for the prior premium and related retaliatory tax year, taking into account the policyholder premiums, account investment income, claims, costs of operation, and other appropriate gains and losses, the director shall transmit any money remaining in the fund as directed by section 77-912, disregarding the provisions of subdivisions (1) through (3) of such section. Interest earned on money in the fund shall be credited proportionately in the same manner as premium and related retaliatory taxes set forth in section 77-912.

(6) By June 30, 2001, the State Treasurer shall transfer three million one hundred sixty-five thousand two hundred sixty-five dollars from the Department of Insurance Cash Fund to the General Fund.

~~(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 member's assessment shall be determined by multiplying the total net loss from operation of the pool by a fraction. The numerator shall equal that member's premium and subscriber contract charges for health~~

insurance written and renewed in the state during the preceding calendar year. The denominator shall equal 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 less than the 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 among the members in the manner specified in subsection (3) of this section by the board.

(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 specified in subsection (3) of this section. The member receiving such abatement or deferral 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 who paid the assessment as a result of such abatement or deferral.

(7) If any member fails to pay an assessment when due as required by subdivision (5) of section 44-4220, the director may, after notice and hearing, take either or both of the following actions unless such payment is deferred by the board as provided for in subsection (6) of this section: (a) Suspend or revoke the member's certificate of authority to transact insurance business in this state, or (b) impose a monetary penalty of one hundred dollars per day, not to exceed an aggregate of ten thousand dollars, accruing from the date the assessment is due.

Sec. 28. 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 ~~person individual~~. The pool 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 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 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. 29. Section 44-4227, Reissue Revised Statutes of Nebraska, is amended to read:

44-4227. ~~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.~~ (1) 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 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. 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. 30. Section 44-4228, Reissue Revised Statutes of Nebraska, is amended to read:

44-4228. (1) Pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of pool coverage as to any condition (a) which had manifested itself during the six-month period immediately preceding the effective date of pool coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (b) for which medical advice, care, or treatment was recommended or received during the six-month period immediately preceding the effective date of pool coverage.

(2) Any ~~person~~ individual whose health coverage is involuntarily terminated on or after January 1, 1992, and who is not eligible for a conversion policy or a continuation-of-coverage policy or contract available under state or federal law may apply for pool coverage but shall submit proof of eligibility pursuant to subdivision (1)(a) of section 44-4221. If such proof is supplied and if pool coverage is applied for under the Comprehensive Health Insurance Pool Act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period, any waiting period or preexisting condition exclusions provided for under the pool coverage shall be waived to the extent similar exclusions, if any, under the previous health coverage have been satisfied and the effective date of the pool coverage shall be the day following termination of the previous health coverage. The board may assess an additional premium for pool coverage provided pursuant to this subsection notwithstanding the premium limitations stated in section 44-4227. For purposes of this section, a ~~person~~ an individual whose health coverage is involuntarily terminated ~~shall mean a person~~ means an individual whose health insurance or health plan is terminated by reason of the withdrawal by the insurer from this state, bankruptcy or insolvency of the employer or employer trust fund, or cessation by the employer of providing any group health plan for all of its employees.

(3) Any ~~person~~ individual whose health coverage under a continuation-of-coverage policy or contract available under state or federal law terminates or is involuntarily terminated on or after July 1, 1993, for any reasons other than nonpayment of premium may apply for pool coverage but shall submit proof of eligibility applied for within ninety days after the termination or involuntary termination. If premiums are paid to the pool for the entire coverage period, the effective date of the pool coverage shall be the day following termination of the previous coverage under the continuation-of-coverage policy or contract. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under any prior health coverage have been satisfied.

(4) Subsection (1) of this section shall not apply to a ~~person~~ an individual who has received medical assistance pursuant to section 43-522 or sections 68-1018 to 68-1025 or an organ transplant recipient terminated from coverage under medicare during the six-month period immediately preceding the effective date of coverage.

(5) All waiting periods and preexisting conditions shall be waived for a ~~person~~ an individual eligible for pool coverage under subdivision (1)(b) of section 44-4221.

Sec. 31. Section 44-4230, Reissue Revised Statutes of Nebraska, is amended to read:

44-4230. The pool shall have a cause of action against a ~~person insured by the pool~~ covered individual 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. The pool shall have a right of subrogation to any payments made to a ~~person insured by the pool~~ covered individual by another person or his or her insurer on account of an injury caused by such other person's wrongful act or negligence.

Sec. 32. Section 44-4233, Revised Statutes Supplement, 1999, is amended to read:

44-4233. (1) Any member subject to premium and related retaliatory tax liability imposed by section 44-150 or 77-908 may offset assessments paid to the pool by such member against its tax liability in the year of payment or subsequent years. ~~For tax years commencing on or after January 1, 1992, the~~ The member may offset such paid assessments against (a) subsequent premium tax prepayments imposed by section 77-918, (b) subsequent premium tax payments imposed by section 77-908, and (c) related retaliatory tax liability imposed by section 44-150. Prior to January 1, ~~2002~~ 2004, no individual member shall be subject to any liability of the pool in excess of its premium and related retaliatory tax liability which may be offset under this section.

(2) Commencing with assessments imposed or paid in 1991 and for all subsequent years prior to January 1, ~~2002~~ 2004, whenever it reasonably appears to the satisfaction of the board that a member has during a calendar year paid assessments that exceed that member's premium and related retaliatory tax liability for that calendar year, the board shall, upon request from such member, order the refund to that member of the amount of the assessment that exceeded that member's premium and related retaliatory tax liability. A member's request for a refund shall be filed with the board not later than thirty days after the due date of the member's premium tax return filed with the department. If the refund is not made by the board within thirty days after receipt of the refund request, the member may within thirty days thereafter initiate a suit in district court for the amount claimed. The suit shall be heard by the district court de novo. In the event that an assessment against a member is limited by reason of that member's premium and related retaliatory tax liability, the amount by which the assessment is limited may be assessed against the other members in a manner consistent with the basis for assessments specified in subsection (3) of section 44-4225.

Sec. 33. Section 44-5223, Reissue Revised Statutes of Nebraska, is amended to read:

44-5223. Sections 44-5223 to 44-5267 and sections 35 and 37 of this act shall be known and may be cited as the Small Employer Health Insurance Availability Act.

Sec. 34. Section 44-5225, Reissue Revised Statutes of Nebraska, is amended to read:

44-5225. For purposes of the Small Employer Health Insurance Availability Act, the definitions found in sections 44-5226 to 44-5255 and sections 35 and 37 of this act shall be used.

Sec. 35. Enrollment date means the first day of coverage in the health benefit plan or, if earlier, the first day of the waiting period.

Sec. 36. Section 44-5246.02, Reissue Revised Statutes of Nebraska, is amended to read:

44-5246.02. Preexisting condition ~~shall mean~~ means a condition whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received ~~during the six months preceding the effective date of coverage within the six-month period ending on the enrollment date.~~ Genetic information shall not be treated as a condition for which a preexisting condition exclusion may be imposed in the absence of a diagnosis of the condition related to such information.

Sec. 37. Waiting period means the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the health benefit plan. If an individual enrolls as a late enrollee or on a special enrollment date, any period before such late or special enrollment is not a waiting period.

Sec. 38. Section 44-6901, Reissue Revised Statutes of Nebraska, is amended to read:

44-6901. For purposes of sections 44-6901 to 44-6918 and sections 39 and 41 of this act, the definitions found in sections 44-6902 to 44-6915 and sections 39 and 41 of this act shall be used.

Sec. 39. Enrollment date means the first day of coverage in the health benefit plan or, if earlier, the first day of the waiting period.

Sec. 40. Section 44-6915, Reissue Revised Statutes of Nebraska, is amended to read:

44-6915. Preexisting condition means a condition whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received ~~during the six months preceding the effective date of coverage within the six-month period ending on the enrollment date.~~ Genetic information shall not be treated as a condition for which a preexisting condition exclusion may be imposed in the absence of a diagnosis of the condition related to such information.

Sec. 41. Waiting period means the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the health benefit plan. If an individual enrolls as a late enrollee or on a special enrollment date, any period before such late or special enrollment is not a waiting period.

Sec. 42. Section 44-6918, Reissue Revised Statutes of Nebraska, is amended to read:

44-6918. The director may adopt and promulgate rules and regulations to carry out sections 44-6901 to 44-6918 and sections 39 and 41 of this act.

Sec. 43. (1)(a) Any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall cover newly adopted children of the insured or enrollee. The coverage for newly adopted children shall be the same as for other dependents. No policy or health benefit plan provision concerning preexisting condition limitations, insurability, eligibility, or health underwriting approval may be applied to newly adopted children when they are enrolled in accordance with this section.

(2) The coverage required by this section:

(a) Is effective upon the earlier of (i) the date of placement for the purpose of adoption or (ii) the date of the entry of an order granting the adoptive parent custody of the child for purposes of adoption;

(b) Continues unless the placement is disrupted prior to legal adoption and the child is removed from placement; and

(c) Continues unless required action as described in subsection (3) of this section is not taken.

(3) If the payment of a specific premium or subscription fee is required to provide coverage for an adopted child, the policy or health benefit plan may require that notification of the adoption of the child and the payment of the required premium or fee be furnished to the insurer or health benefit plan within thirty-one days after the adoption of the child in order to have the coverage continue beyond the thirty-one-day period.

Sec. 44. Section 77-912, Revised Statutes Supplement, 1999, is amended to read:

77-912. The Director of Insurance shall transmit fifty percent of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer, forty percent of such taxes paid to the General Fund, and ten percent of such taxes paid to the Mutual Finance Assistance Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that:

(1) All fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be remitted to the State Treasurer for credit to the Fire Insurance Tax Fund;

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund; and

(3) Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, all premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state shall be remitted to the Comprehensive Health Insurance Pool Distributive Fund. ~~On August 17, 1999, the State Treasurer shall transfer one hundred thousand dollars to the Nebraska Local Government Innovation and Restructuring Fund.~~

Sec. 45. Section 77-918, Reissue Revised Statutes of Nebraska, is amended to read:

77-918. Insurers transacting insurance in this state whose annual tax for the preceding taxable year was four thousand dollars or more shall make prepayments of the annual taxes imposed pursuant to Chapter 77, article 9, and related retaliatory taxes imposed pursuant to Chapter 44, article 1.

Each insurer required to make prepayments shall remit such prepayments on or before April 15, June 15, and September 15 of the current taxable year. Remittance for such prepayments shall be accompanied by a prepayment form prescribed by the director.

The amount of each such prepayment shall be at least one-fourth of either (1) the total tax paid for the immediately preceding taxable year or (2) eighty percent of the actual tax due for the current taxable year. For the taxable year ending December 31, 2001, total tax paid for the immediately preceding taxable year means tax payable prior to any offsets taken under subsection (1) of section 44-4233.

The director, for good cause shown, may extend for not more than ten days the time for making a prepayment. The extension may be granted at any time if a request for such extension is filed with the director within or prior to the period for which the extension may be granted. Insurers who fail to pay any premium or retaliatory tax, including prepayments, when due shall pay interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, until such tax is paid. Any insurer who fails to make the prepayments within the prescribed time period or to obtain an extension shall be subject to the penalties prescribed in section 77-911.

The director shall immediately deposit one-half of the prepayments received in the Premium and Retaliatory Tax Suspense Fund, which fund is hereby created, and one-half of the prepayments received in the General Fund. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, the director shall determine the amount of the premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, and such amount shall be credited to the Comprehensive Health Insurance Pool Distributive Fund. Except as provided in subsections (5) and (6) of section 44-4225, on ~~On~~ May 1 of each year the director shall transfer all of the interest earned in the Premium and Retaliatory Tax Suspense Fund on the immediately preceding year's prepayments to the General Fund and transfer the balance of the preceding year's prepayments deposited in the Premium and Retaliatory Tax Suspense Fund to the Insurance Tax Fund. Any money in the Premium and Retaliatory Tax Suspense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 46. Sections 22, 23, 27, 44, 45, and 47 of this act become operative on January 1, 2001. The other sections of this act become operative on their effective date.

Sec. 47. Original sections 44-4219, 44-4220, 44-4225, and 77-918, Reissue Revised Statutes of Nebraska, and section 77-912, Revised Statutes Supplement, 1999, are repealed.

Sec. 48. Original sections 44-4202 to 44-4217, 44-4221, 44-4222, 44-4224, 44-4226 to 44-4228, 44-4230, 44-5223, 44-5225, 44-5246.02, 44-6901, 44-6915, and 44-6918, Reissue Revised Statutes of Nebraska, and section 44-4233, Revised Statutes Supplement, 1999, are repealed.