

**SUBJECT:** Allowing a state innovation waiver under the ACA for certain health plans

**COMMITTEE:** Insurance — favorable, without amendment

**VOTE:** 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

**WITNESSES:** For — Lee Manross, Texas Association of Health Underwriters  
(*Registered, but did not testify:* Tim Von Kennel, NAIFA-Texas; Annie Spilman, National Federation of Independent Business-Texas; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Jennifer Cawley, Texas Association of Life and Health Insurance; Kandice Sanaie, UnitedHealthcare)

Against — (*Registered, but did not testify:* Jack Pierce, TMA)

On — (*Registered, but did not testify:* Doug Danzeiser and Raja Malkani, Texas Department of Insurance)

**BACKGROUND:** 42 U.S.C. sec. 18022 addresses essential health benefits requirements under the federal Patient Protection and Affordable Care Act. 42 U.S.C. sec. 18022(d)(3) requires the U.S. Secretary of Health and Human Services to develop guidelines to provide for a de minimis variation in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates.

**DIGEST:** HB 1635 would allow the Texas Commissioner of Insurance to apply to and negotiate with the U.S. secretary of Health and Human Services to obtain a state innovation waiver for small employer health benefit plans of the actuarial value requirements and related levels of health plan coverage requirements imposed under 42 U.S.C. sec. 18022(d)(3), which addresses the allowable variance in actuarial valuations of health plans.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

HB 1635 would authorize the Texas Commissioner of Insurance to request a state innovation waiver from the federal government to allow small employer health benefit plans to have different actuarial value requirements from those required by the federal Affordable Care Act (ACA).

Federal requirements under the Affordable Care Act impose limitations on the range of actuarial values that a health benefit plan must fall within to comply with federal law, which increases plan expenses and costs for employers. Federal restrictions on actuarial values for small employer health plans create confusion for employers if their plans become noncompliant with federal law and need to be redesigned and re-priced. The bill would allow more flexibility and clarity for employers in setting actuarial values for small employer health plans.

The bill would affect underwriting, not reimbursement rates. Reimbursement rates are negotiated between health insurers and the providers and are not affected by changes to actuarial values. The bill would not affect the essential health benefits required to be provided by plans under the Affordable Care Act and would not change the designation of "metal levels" to plans according to actuarial value. The bill would give small employers more flexibility in fine-tuning a plan to meet the needs of their employees and could result in lower premiums for patients.

**OPPONENTS  
SAY:**

HB 1635 could give health insurance companies more leeway over setting certain health plans' actuarial values, which could reduce reimbursement levels for physicians and increase out-of-pocket costs for patients.

The term "actuarial value" refers to the percentage of total average costs for covered benefits for which a plan would pay. Under the ACA, plans have designated "metal levels" that correspond to their actuarial value. For example, a "bronze" plan covers 60 percent of the actuarial value with

respect to essential benefits as required under the ACA, while a "platinum" plan covers 90 percent of the actuarial value with respect to essential benefits. Allowing a waiver from these actuarial value requirements in the ACA could create further confusion for employers.

NOTES:

A companion bill, SB 1406 by Creighton, was approved by the Senate on April 19.