

No. **08-0392**

OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date: APR 30 2008

Subject Considered:

**RESTATED PLAN OF OPERATION
FOR THE TEXAS HEALTH INSURANCE RISK POOL**

General remarks and official action taken:

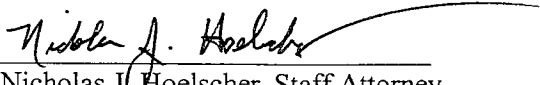
On this date came on for consideration by the Commissioner of Insurance, the matter of approving amendments restating the Plan of Operation of the Texas Health Insurance Risk Pool pursuant to TEX. INS. CODE ANN. §1506.201. The Commissioner finds that the amendments restating the Plan of Operation were approved by the Pool Board of Directors on October 26, 2007, as provided by TEX. INS. CODE ANN. §1506.201, and that notice of the restated Plan of Operation and opportunity to obtain copies of, and make comments on, the restated Plan of Operation was published in the *Texas Register* on April 11, 2008. Further the Commissioner determines that the Plan of Operation as restated assures the fair, reasonable and equitable administration of the Pool in accordance with TEX. INS. CODE ANN. §1506.201.

The Commissioner is of the opinion that the restated Texas Health Insurance Risk Pool Plan of Operation, as proposed by the Texas Health Insurance Risk Pool Board of Directors, should be approved.

IT IS THEREFORE ORDERED that the restated Plan of Operation submitted to the Commissioner by the Board of Directors of the Texas Health Insurance Risk Pool is approved, to be effective immediately.


MIKE GEESLIN
COMMISSIONER OF INSURANCE

Reviewed by:


Nicholas J. Hoelscher, Staff Attorney
Legal Services Division
Policy Development Counsel

TEXAS HEALTH INSURANCE RISK POOL
RESTATED PLAN OF OPERATION

Section 1506.201, Texas Insurance Code (the Code), provides that the operation and management of the Texas Health Insurance Risk Pool (the Pool) is governed by the Plan of Operation (the Plan), adopted by the Pool Board of Directors (the Board). The Plan must have procedures for: (1) operation of the Pool; (2) selection of Third Party Administrators; (3) creation of a fund, under management of the Board, for administrative expenses; (4) handling, accounting and auditing of money and other assets of the Pool; (5) development and implementation of a program to publicize the existence of the Pool and the eligibility requirements and enrollment procedures for coverage by the Pool, and to foster public awareness of the Pool; (6) creation of a grievance committee to review complaints presented by applicants for coverage and individuals covered by the Pool; and (7) other matters that may be necessary and proper for the execution of the Board's powers, duties and obligations under Chapter 1506 of the Code. Statutory references are to the Code, unless otherwise indicated.

§1. Name and Purpose. The name of this organization is the Texas Health Insurance Risk Pool, created pursuant to Chapter 1506. The purposes of the Pool are to provide access to quality health care coverage at minimum cost to the public, to those who otherwise would be uninsurable, to relieve the insurable population of the disruptive cost of sharing such coverage, to maximize reliance on strategies of managed care proven by the private sector, and, in accordance with the mandates of federal law, expand availability of health care coverage in Texas.

§2. Definitions. The following words and terms, when used in this Plan, shall have the following meanings, unless the context clearly indicates otherwise.

- (a) Board: The Board of Directors of the Texas Health Insurance Risk Pool.
- (b) Chapter 1506: Texas Insurance Code, Chapter 1506, as amended by the 80th legislature, effective January 1, 2008.
- (c) Commissioner: The Commissioner of Insurance.
- (d) Department: The Texas Department of Insurance.
- (e) Health Benefit Plan: The meaning assigned by Section 1506.002.
- (f) Health Benefit Plan Issuer: The meaning assigned by Section 1506.001 (3).
- (g) Plan: Plan of Operation for the Pool.
- (h) Pool: The Texas Health Insurance Risk Pool.
- (i) Pool Administrator: An insurer or Third Party Administrator or administrators, selected by the Board to perform such administrative functions as the Board assigns.
- (j) Third Party Administrator: For the purposes of this Plan, a person or entity that collects premiums or contributions from, or adjusts or settles claims in connection with, Health Benefit Plans for residents of this state, and over which the Department has licensing jurisdiction pursuant to Chapter 4151 and 28 Texas Administrative Code §§7.1601-7.1617.

§3. Authority of the Pool. (a) Employees. The Pool may employ and set the compensation of any persons necessary to assist the Pool in carrying out its responsibilities and functions, including an executive director.

(b) Providing Coverage. The Pool may provide health benefit coverage to persons who are eligible for that coverage under Chapter 1506. The Pool may issue insurance policies subject to Chapter 1506 and this Plan. The Pool may issue additional types of health insurance policies to provide optional coverages which comply with applicable provisions of state and federal law.

(c) Charges, Formulas and Forms.

(1) Premium Rates. The Pool may establish appropriate rates, rate schedules, rate adjustments, expense allowances, and claim reserve formulas and

perform any actuarial functions appropriate to the operation of the Pool. The Pool's premium rates must be established in accordance with Section 1506.105. The Pool will submit each rate and rate schedule to the Commissioner for prior approval.

(2) The Pool may adopt policy forms, endorsements, riders and applications for coverage in conjunction with Chapter 1506, Subchapter D.

(d) Contracts. The Pool may enter into a contract that is necessary to carry out Chapter 1506, including, with the approval of the Commissioner, a contract with a similar pool in another state for the joint performance of common administrative functions or with another organization for the performance of common administrative functions. The Pool may contract for stop-loss insurance and reinsurance for risks incurred by the Pool.

(e) Legal Action. The Pool may sue or be sued. The Pool may take any legal action necessary to avoid payment of improper claims against the Pool or with respect to the coverage provided by or through the Pool or to recover or collect any amounts due to the Pool, including assessments due to the Pool, amounts erroneously or improperly paid by the Pool, and amounts paid by the Pool as a mistake of fact or law.

(f) Cost Containment. The Pool shall provide for and use cost containment measures and requirements to make the coverage offered by the Pool more cost-effective. The cost containment measures must include consideration and use of individual case management and disease management to the extent the Board determines these are cost effective. The cost containment measures may include preadmission screening, the requirement of a second surgical opinion, and concurrent utilization review subject to Chapter 4201. The Pool may design, use, contract for, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations and health maintenance organizations.

(g) Borrowing. The Pool may borrow money as necessary to implement the purposes of the Pool.

(h) Additional Authority. In addition to the other powers granted to the Pool under Chapter 1506, the Pool may exercise any of the authority that a Health Benefit

Plan Issuer authorized to write Health Benefit Plans in Texas may exercise under Texas law.

§4. Plan of Operation.

(a) The Pool shall perform its functions in accordance with Chapter 1506 and this Plan. The Plan shall become effective upon approval by the Commissioner, provided that the Commissioner determines that the Plan is suitable to assure the fair, reasonable, and equitable administration of the Pool.

(b) The Board may amend or restate the Plan as necessary to carry out its statutory duties under Chapter 1506. An amendment to or restatement of the Plan must be approved by the Commissioner before it is effective.

§5. Fiscal Year. The fiscal year of the Pool shall begin on January 1 of each calendar year.

§6. Board of Directors.

(a) The Pool is governed by a Board of Directors, appointed by the Commissioner in accordance with Section 1506.051 of the Code, who serve staggered six-year terms. If a vacancy occurs on the Board, the Commissioner shall fill the vacancy for the unexpired term with a person who has the appropriate qualifications to fill that position on the Board.

(b) The Commissioner shall designate one member of the Board to serve as Chair. The Chair serves in that capacity at the pleasure of the Commissioner. The Chair shall appoint a Vice Chair, who serves in that capacity at the pleasure of the Chair. The Chair shall appoint other officers, including a Secretary/Treasurer and such other officers as the Chair may consider necessary, to serve at the pleasure of the Chair. The offices of Chair and Vice Chair may not be held by the same person nor may the Chair or Vice Chair serve as the Secretary/Treasurer. Officers shall perform

their duties and may exercise the powers and authority assigned by the Chair, incident to the office, and provided in this Plan, as follows:

(1) Chair. Shall preside at meetings of the Board and shall assume such duties as shall be designated from time to time by the Board. The Chair or the Chair's designee, including the Pool executive director, when authorized by the Board, will execute and deliver documents in the name of the Pool.

(2) Vice Chair. Shall act as Chair at meetings in the absence of the Chair and shall assume such other duties as shall be designated from time to time by the Chair.

(3) Secretary/Treasurer. Shall be responsible for the retention and custody of the records of the Pool and minutes or transcripts of the proceedings of the Board; shall give all notices required; and when authorized by the Board, will execute, attest and deliver documents of the Board. The Secretary/Treasurer shall be custodian of the property of and chief financial officer for the Board and will be responsible for assuring that correct and complete books and records of account are kept for the Pool.

(c) Meetings.

(1) The Board and each member or committee of the Board shall comply with the Texas Open Meetings Act (TOMA), Chapter 551 of the Texas Government Code, to the extent that TOMA is applicable. Notice of meetings must comply with the TOMA, and any meeting of the Board or committees shall be open to the public, unless such meeting lawfully may be closed pursuant to TOMA.

(2) Five of the nine Board members, present in person, and to the extent allowed by TOMA, by teleconference or videoconference, constitutes a quorum. If there is a vacancy or vacancies on the Board, the number of members constituting a quorum shall remain at five.

(3) Written notice, including e-mail, of regularly scheduled and special meetings, stating the time and place and, if a special meeting, the purpose of the meeting, will be delivered either personally, by mail, by e-mail, or by telefax at the direction of the person calling the meeting, to each Board member at a reasonable time before the meeting. If mailed or telefaxed, a notice is deemed delivered when

deposited in the mail or telefaxed. If notice is required to be given to any member of the Board, a waiver of notice in writing, signed by the person entitled to the notice, is equivalent to the giving of timely notice. The attendance of a Board member at a meeting constitutes a waiver of notice of the meeting, except when attendance is for the sole purpose of objecting because the meeting has not been lawfully called or convened.

(4) The Board shall hold a meeting on or after January 1 but before June 1 of each year. At the meeting, the Board:

(A) shall determine for the preceding fiscal year any net loss, including administrative expenses and incurred losses and taking into account investment income and other appropriate gains and losses;

(B) shall adopt or ratify a report of such net loss to the Commissioner, as required by Section 1506.252;

(C) shall determine the assessment to be made on Health Benefit Plan Issuers in accordance with Sections 1506.251 through 1506.253 and this Plan;

(D) shall review the last annual audit, if any, prepared by the state auditor, under Section 1506.004, and the last audit or audits, if any, prepared by an outside auditor or any other entity. The Board shall determine if any changes need to be made in the operation of the Pool based on the audit or audits;

(E) shall prepare and adopt the annual report, in accordance with Section 1506.057, summarizing the activities of the Pool in the preceding fiscal year, including information regarding net written and earned premiums, Pool enrollment, administrative expenses, and paid and incurred losses, and submit that report to the governor, the lieutenant governor, the speaker of the house of representatives and the Commissioner by June 1 of each year;

(F) at its option, may consider any other matters the Board determines that it should consider.

(5) Special meetings of the Board may be called by a majority of the Board or the chair of the Board, and will be held at the time and place fixed by the chair or the Board members calling the meeting.

(6) Written or tape-recorded minutes of each Board meeting shall be made. Originals of these minutes shall be retained by the Pool, and a copy shall be forwarded to the Commissioner. Copies of these minutes shall be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code.

(d) The Chair shall appoint such committees as he or she deems necessary. Such committees will include a grievance committee.

(e) Each member of the Board is entitled to be paid a per diem for each day on which the member performs his or her duties as a member for the Board and to reimbursement of his or her expenses while engaged in performing his or her duties as a member of the Board. The amount of per diem and the amount of reimbursement for expenses is the same as provided by the General Appropriations Act for state officials, as provided by Section 1506.054.

(f) A member of the Board is not liable for an act or omission performed in good faith in the performance of powers and duties under Chapter 1506, and a cause of action does not arise against a member for such act or omission.

§7. Indemnification.

(a) The Pool shall indemnify, through the purchase of liability insurance or otherwise, any person employed by or otherwise working for the Pool, from liability for any action or omission performed in good faith in the performance of such person's powers and duties assigned to him or her by the Board or the Pool executive director or other Pool employee, designated by Board to make such assignments.

(b) The Pool may indemnify, through the purchase of liability insurance or otherwise, any member of the Pool Board of directors, from liability for any action or omission performed in good faith in the performance of powers and duties under Chapter 1506.

§8. Administrative Expenses. The Board shall establish a Health Insurance Pool Fund (the "Pool Fund") under the direction of the Pool executive director or the Board for administrative expenses of the Pool. The executive director, subject to Board approval,

may name one or more banks insured by the Federal Deposit Insurance Corporation as depository for Pool funds. The Board will make reasonable delegations of deposit and withdrawal authority for such accounts for Pool business, consistent with prudent fiscal policy. The Pool executive director or other designee of the Board is responsible for handling, safeguarding, investing, and disbursing the funds of the Pool, subject to direction of the Board. The Pool executive director or other designee serves the Pool in a fiduciary capacity for the handling, safeguarding, and disbursing of funds.

§9. Managing Pool Assets. The Board may conduct periodic audits to assure the general accuracy of the financial data submitted to the Pool. The Board or its representative shall conduct periodic audits, at intervals determined by the Board, of the Pool Administrator or any other person or entity providing services to the Pool. The Board may retain a Certified Public Accountant or other person or entity to conduct the audit.

§10. Conditions Triggering Automatic Eligibility for Coverage. The Board shall promulgate a list of medical or health conditions for which a person shall automatically be eligible for Pool coverage, as provided in Section 1506.154. The Board may amend the list from time to time as appropriate.

§11. Pool Benefits: Duties of the Board.

(a) In accordance with Section 1506.151, the Pool shall offer to each eligible individual Pool coverage that is consistent with major medical expense coverage. The Board, with the approval of the Commissioner, shall establish:

- (1) the coverages to be provided by the Pool;
- (2) the applicable schedules of benefits; and
- (3) any exclusions to coverage and other limitations.

(b) Benefits provisions of the Pool's health benefit coverages must include:

- (1) all required or applicable definitions;
- (2) a list of any exclusions or limitations to coverage;

- (3) a description of covered services; and
- (4) any deductible, coinsurance and copayment requirements.

§12. Pool Administrator.

(a) On a competitive bid basis, the Board may contract with one or more Health Benefit Plan Issuers or Third Party Administrators, authorized by the Department, to be a Pool Administrator.

(b) The Board shall evaluate bids submitted by bidders based on the following criteria:

- (1) the bidder's proven ability to handle individual Health Benefit Plans;
- (2) the efficiency of the bidder's claims paying procedures;
- (3) the bidder's estimate of total charges for administering the Pool;
- (4) the bidder's ability to administer the Pool in a cost-efficient manner;
- (5) the bidder's financial condition and stability; and

(6) any other criteria that the Board reasonably deems appropriate to consider and that relate to a bidder's ability to perform functions assigned to the Pool Administrator by the Board.

(c) To the extent allowed by the Insurance Code and other provisions of state and federal law, the Board may require a bidder to submit such documents as the Board reasonably deems necessary to provide evidence of the criteria set forth in Subsection (b).

(d) A Health Benefit Plan Issuer or a Third Party Administrator, selected by the Board to be a Pool Administrator, shall perform the functions assigned to it, including, but not limited to:

- (1) reviewing applications for eligibility for coverage by the Pool and issuing Pool policies;
- (2) establishing billing procedures for collection of premiums from individuals covered by the Pool, at intervals determined by the Board;
- (3) performing functions necessary to assure timely payment of benefits to individuals covered by the Pool, including:

(A) providing information relating to the proper manner of submitting a claim for benefits to the Pool and distributing claim forms; and

(B) evaluating the eligibility of each claim for payment by the Pool;

(4) submitting regular reports to the Board relating to the operation of the Pool, in a format and content and at intervals determined by the Board or the Pool executive director; and

(5) determining, on or after the close of each fiscal year, the net written and earned premiums, expenses of administration, and paid and incurred losses of the Pool for that year, and reporting this information to the Board and the Commissioner.

§13. Procedures to Establish Public Awareness of the Pool. The Board shall establish and maintain public awareness of the Pool, including its eligibility requirements and enrollment procedures. The methods to be used by the Board may include:

(a) written responses to interested persons, advocacy groups, insurers and potential applicants to the Pool who contact the Pool concerning the availability of coverage by the Pool;

(b) periodic press releases on the operation of the Pool, including information for eligible individuals about applying for coverage by the Pool;

(c) presentations to the public by Board members, administrative staff of the Pool and others designated by the Board on the subject of the Pool; and

(d) development and distribution of a brochure or other material describing the coverage available through the Pool and the application process for an individual to apply for coverage by the Pool.

§14. Assessments.

(a) Interim and Regular Assessments. The Board shall make interim assessments and regular assessments in accordance with Subchapter F of Chapter 1506 and rules promulgated by the Department.

(b) Proposed Assessment of Health Benefit Plan Issuer and Appeal. The Pool will determine the assessment of each Health Benefit Plan Issuer. Once that

determination is made, the Pool will provide written notice to each Health Benefit Plan Issuer of its proposed assessment amount. If the Health Benefit Plan Issuer has incorrectly reported assessable covered lives or assessable premium, as applicable, the Health Benefit Plan Issuer may appeal the amount of the proposed assessment. The Pool must receive a written notice of appeal from the Health Benefit Plan Issuer within thirty (30) days of the date of the Pool's notice of proposed assessment. The Health Benefit Plan Issuer must submit corrected information and any supporting documentation for those corrections to the Pool with its notice of appeal. The Health Benefit Plan Issuer must also submit any further documentation of the corrected information as may be requested by the Pool. If no notices of appeal are submitted within thirty (30) days of the date of the Pool's notices of proposed assessment, the assessment amounts will be final and there will be no further appeal to the Pool of the assessment amounts.

§15. Texas Public Information Act: Confidentiality. The Texas Public Information Act (TPIA) applies to the Pool. The Board and employees of the Pool shall protect the confidentiality of information deemed confidential and not subject to inspection by the public, including, to the extent delineated by TPIA, medical records, individually identifiable personal information and information that may constitute proprietary information or trade secrets.

§16. Grievance Resolution Procedure; Grievance Committee.

(a) The Board shall establish objective procedures for the resolution of grievances from applicants for Pool coverage and individuals covered by the Pool concerning eligibility, benefits and claims. At a minimum, those procedures will include the following:

(1) The Pool Administrator must receive, investigate, evaluate, and attempt to informally resolve grievances in an objective and efficient manner. The process must be timely, notifying the complainant, in writing, of its decision, and the reason for the decision, within thirty (30) days after the date the grievance is received

by the Pool Administrator. When the issue in dispute regards services that are experimental, investigative or not medically necessary, the Pool Administrator shall procure, and include in its written decision, the review and report of a physician as part of this procedure.

(2) The Pool Administrator will provide to each potential applicant for coverage by the Pool, the address and phone number of the person or officer designated by the Pool Administrator to receive complaints, and information which clearly describes each step in the grievance resolution procedure, including telephone number and address of the Pool executive director, if the complainant pursues the grievance to the next step of the grievance process, described in subsection (b) of this section.

(b) Any person not satisfied with the Pool Administrator's decision on the grievance may submit the grievance to the grievance committee, appointed by the Board, by sending a written letter of appeal to the Pool executive director, describing the grievance, along with any supporting documentation, within sixty (60) days after the complainant's receipt of the written notification of the decision from the Pool Administrator.

(c) The grievance committee shall review the letter of appeal, the Pool Administrator's written decision and any supporting documentation from the Pool Administrator, and may review any other information which the committee reasonably believes is necessary to resolve the grievance. The grievance committee may, at its discretion, invite the interested parties to present the grievance at a meeting of the committee. A written determination of the committee's findings will be sent to all interested parties within ten (10) days of the date of the committee's meeting to discuss the grievance, or within forty-five (45) days after the grievance was referred to the committee, whichever date is earlier. The committee's decision is the final administrative step available to applicants for coverage and individuals covered by the Pool.

(d) The grievance committee shall make a report to the Board at the next Board meeting following completion of the review of each complaint. The Board shall retain all

written complaints regarding the Pool for a minimum of three years from the date the Pool received the complaint.

§17. Interested Parties. A contract or transaction, between the Pool and one or more of its Board members or between the Pool and any other corporation, partnership, association, or other organization in which one or more of its Board members is a director or has a financial interest, shall be void, unless the interested Board member discloses at a Board meeting open to the public the material facts regarding his or her relationship or interest as to the contract or transaction, the interested Board member does not vote on the contract or transaction, and a majority of the full Board votes to approve the transaction.

§18. Agents. The Board may authorize the payment of a referral fee to a licensed insurance agent who refers an applicant to the Pool, if that applicant is accepted for coverage by the Pool.

§19. Conformity to Statute. Chapter 1506 is incorporated as part of this Plan.