

SENATE BILL NO. 173

BY SENATORS MILLS, APPEL, CHABERT, CLAITOR, CORTEZ, ERDEY, FANNIN,
GATTI, HENSGENS, HEWITT, JOHNS, LONG, MARTINY AND
GARY SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact R.S. 22:11.1, Subpart F of Part III of Chapter 4 of Title 22 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 22:1121 through 1130, and
4 Subpart F-1 of Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of
5 1950, to be comprised of R.S. 22:1131 through 1138, relative to health insurance; to
6 provide relative to enrollment, dependent coverage, rate setting, preexisting
7 conditions, annual and lifetime limits, and essential benefits under certain
8 circumstances; to require the commissioner of insurance to establish a risk-sharing
9 program; to provide for the operation, parameters, funding, and legislative approval
10 of the risk-sharing program; to provide for rulemaking; to provide for effectiveness;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 22:11.1, Subpart F of Part III of Chapter 4 of Title 22 of the Louisiana
14 Revised Statutes of 1950, comprised of R.S. 22:1121 through 1130, and Subpart F-1 of Part
15 III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S.
16 22:1131 through 1138, are hereby enacted to read as follows:

17 **§11.1. Rules and regulations; essential health benefits package**

18 **The commissioner shall promulgate rules pursuant to the Administrative**

1 Procedure Act to define "essential health benefits", to establish annual
 2 limitations on cost sharing and deductibles, and to define required levels of
 3 coverage. The commissioner shall adopt initial administrative rules before
 4 January 1, 2020. Notwithstanding any provision of R.S. 49:953(B) to the
 5 contrary, the commissioner may adopt initial administrative rules as required
 6 by this Section pursuant to the provisions of R.S. 49:953(B) without a finding
 7 that an imminent peril to the public health, safety, or welfare exists.

8 * * *

9 SUBPART F. HEALTHCARE COVERAGE FOR LOUISIANA

10 FAMILIES PROTECTION ACT

11 §1121. Short Title

12 This Subpart shall be known and may be cited as the "Healthcare
 13 Coverage for Louisiana Families Protection Act".

14 §1122. Effectiveness

15 If a court of competent jurisdiction rules that the Patient Protection and
 16 Affordable Care Act, P.L. 111-148, is unconstitutional and the judgment of that
 17 court becomes final and definitive, the attorney general shall give written
 18 notification of the final and definitive ruling to the commissioner, the
 19 legislature, and the Louisiana State Law Institute. The provisions of this
 20 Subpart shall become effective ninety days after receipt by the commissioner of
 21 the written notification. However, no provision of this Subpart shall abridge or
 22 affect the provisions of insurance policies or contracts already in effect until
 23 such policies or contracts are renewed.

24 §1123. Preexisting condition exclusions prohibited

25 A health insurance policy or contract issued or issued for delivery in this
 26 state after the effective date of this Subpart shall not impose a preexisting
 27 condition exclusion. This Section shall not limit an insurer's ability to restrict
 28 enrollment in an individual contract to open enrollment and special enrollment
 29 periods in accordance with other provisions of this Title.

30 §1124. Annual and lifetime limits prohibited

1 A health insurance policy or contract issued or issued for delivery in this
2 state after the effective date of this Subpart shall not do either of the following:

3 (1) Establish lifetime limits on the dollar value of benefits for any
4 participant or beneficiary.

5 (2) Establish annual limits on the dollar value of essential benefits, as
6 determined by the commissioner, to the extent not inconsistent with applicable
7 federal law.

8 §1125. Coverage for dependent children

9 A health insurance policy or contract issued or issued for delivery in this
10 state after the effective date of this Subpart that offers coverage for a dependent
11 child shall offer dependent coverage, at the option of the policyholder, until the
12 dependent child attains the age of twenty-six. An insurer may require, as a
13 condition of eligibility for coverage in accordance with this Section, that a
14 person seeking coverage for a dependent child provide written documentation
15 on an annual basis that the dependent child satisfies the requirements
16 applicable to dependent children in this Title.

17 §1126. Rate setting

18 For all health insurance policies, contracts, or certificates that are
19 executed, delivered, issued for delivery, continued, or renewed in this state after
20 the effective date of this Subpart, the maximum rate differential due to age filed
21 by the carrier as determined by ratio shall be five to one. The limitation does
22 not apply for determining rates for an attained age of less than nineteen years
23 or more than sixty-five years.

24 §1127. Open enrollment

25 A health insurance policy or contract issued or issued for delivery in this
26 state after the effective date of this Subpart may restrict enrollment in
27 individual health plans to open enrollment periods and special enrollment
28 periods to the extent not inconsistent with applicable federal law. The
29 commissioner may adopt rules establishing minimum open enrollment dates
30 and minimum criteria for special enrollment periods for all individual health

1 plans offered in this state.

2 §1128. Comprehensive health coverage

3 A. Notwithstanding any other provision of law to the contrary, a health
 4 insurance policy or contract issued or issued for delivery in this state thirty days
 5 or more after rules promulgated pursuant to Subsection G of this Section
 6 become effective shall, at a minimum, provide coverage that incorporates an
 7 essential health benefits package consistent with the requirements of this
 8 Section.

9 B. As used in this Section, "essential health benefits package" means
 10 coverage that:

11 (1) Provides for the essential health benefits defined by the commissioner
 12 pursuant to Subsection C of this Section.

13 (2) Limits cost sharing for coverage in accordance with Subsection E of
 14 this Section.

15 (3) Provides for levels of coverage in accordance with Subsection F of
 16 this Section.

17 C. The commissioner shall ensure that the scope of the essential health
 18 benefits package required pursuant to this Section is substantially similar to
 19 that of the essential health benefits required for a health plan subject to the
 20 federal Patient Protection and Affordable Care Act as of January 1, 2019. The
 21 commissioner shall define the essential health benefits required for a health
 22 plan, provided the definition includes at a minimum the following general
 23 categories and the items and services covered within the categories:

24 (1) Ambulatory patient services.

25 (2) Emergency services.

26 (3) Hospitalization.

27 (4) Maternity and newborn care.

28 (5) Mental health and substance use disorder services, including
 29 behavioral health treatment.

30 (6) Prescription drugs.

1 **(7) Rehabilitative and habilitative services and devices.**

2 **(8) Laboratory services.**

3 **(9) Preventive and wellness services and chronic disease management.**

4 **(10) Pediatric services, including oral and vision care.**

5 **D. In defining essential health benefits for purposes of this Section, the**
6 **commissioner shall do the following:**

7 **(1) Ensure that the essential health benefits reflect an appropriate**
8 **balance among the categories enumerated in Subsection C of this Section, so**
9 **that benefits are not unduly weighted toward any category.**

10 **(2) Ensure that coverage decisions, determination of reimbursement**
11 **rates, establishment of incentive programs, and designation of benefits are**
12 **effected in ways that do not discriminate against individuals because of age,**
13 **disability, or life expectancy.**

14 **(3) Take into account the healthcare needs of diverse segments of the**
15 **population, including women, children, persons with disabilities, and other**
16 **groups.**

17 **(4) Ensure that health benefits established as essential are not subject to**
18 **denial to an individual, against the individual's wishes, on the basis of the**
19 **individual's age or life expectancy or of the individual's present or predicted**
20 **disability, degree of medical dependency, or quality of life.**

21 **(5) Provide that a qualified health plan shall not be treated as providing**
22 **coverage for the essential health benefits package described in Subsection B of**
23 **this Section unless the plan complies with the provisions of the Patient**
24 **Protection and Affordable Care Act, P. L. 111-148, relative to coverage and**
25 **payment for emergency department services.**

26 **(6) Provide that if a plan is offered through an exchange, another health**
27 **plan offered through that exchange shall not fail to be treated as a qualified**
28 **health plan solely because the plan does not offer coverage of benefits offered**
29 **through the stand-alone plan that are otherwise required under Paragraph**
30 **(C)(10) of this Section.**

1 (7) Annually review the essential health benefits package under
2 Subsection B of this Section and submit a report to the legislature that contains
3 the following:

4 (a) An assessment of whether enrollees are facing any difficulty accessing
5 needed services for reasons of coverage or cost.

6 (b) An assessment of whether the essential health benefits package needs
7 to be modified or updated to account for changes in medical evidence or
8 scientific advancement.

9 (c) Information on how the essential health benefits package will be
10 modified to address any gaps in access or changes in the evidence base.

11 (d) An assessment of the potential of additional or expanded benefits to
12 increase costs and the interactions between the addition or expansion of benefits
13 and reductions in existing benefits to meet actuarial limitations.

14 (8) Periodically update the essential health benefits package under
15 Subsection B of this Section to address any gaps in access to coverage or
16 changes in the evidence base the commissioner identifies in the review
17 conducted under Paragraph (7) of this Subsection.

18 E. The commissioner shall establish annual limitations on cost sharing
19 and deductibles that are substantially similar to the limitations for health plans
20 subject to the federal Patient Protection and Affordable Care Act as of
21 January 1, 2019. The commissioner may increase the annual limitation as
22 needed to reflect any premium adjustment percentage. For purposes of this
23 Subsection, "premium adjustment percentage" means the percentage, if any,
24 by which the average per capita premium for health insurance coverage in the
25 United States for the preceding calendar year, as estimated by the commissioner
26 no later than October first of the preceding calendar year, exceeds the average
27 per capita premium for 2019.

28 F. The commissioner shall define levels of coverage that are substantially
29 similar to the levels of coverage required for health plans subject to the federal
30 Patient Protection and Affordable Care Act as of January 1, 2019.

1 G. The commissioner shall promulgate rules pursuant to the
2 Administrative Procedure Act to define "essential health benefits" pursuant to
3 Subsection C of this Section, to establish annual limitations on cost sharing and
4 deductibles pursuant to Subsection E of this Section, and to define required
5 levels of coverage pursuant to Subsection F of this Section.

6 H. Within thirty days of the effective date of rules promulgated that
7 define essential health benefits as required pursuant to Subsection G of this
8 Section or within thirty days after promulgating rules adopting any changes to
9 the definition of essential health benefits, the commissioner shall submit a
10 report summarizing the definition of essential health benefits to the House and
11 Senate committees on insurance.

12 I. This Section shall not be construed to prohibit a health plan from
13 providing benefits in excess of the essential health benefits described in this
14 Section.

15 §1129. Conflict of laws

16 In case of any conflict between the provisions of this Subpart and any
17 other provision of law, the provisions of this Subpart shall control unless
18 application of this Subpart results in a reduction in coverage for any insured.

19 §1130. Applicability

20 A. The provisions of this Subpart shall be effective or enforceable only
21 in the event that the tax credit authorized in Section 1401 of the Patient
22 Protection and Affordable Care Act of 2010, P. L. 111-148, as amended by the
23 Healthcare and Education Reconciliation Act of 2010, P. L. 111-152, and
24 codified in Section 16B of the Internal Revenue Code, is held to be valid by a
25 court of competent jurisdiction or is otherwise enforceable at law, or unless
26 adequate appropriations are timely made by the federal or state government in
27 an amount that is calculated in a similar manner as the tax credit in Section
28 1401 of the Patient Protection and Affordable Care Act.

29 B. The provisions of this Subpart shall not apply to grandfathered
30 coverage as defined in R.S. 22:1091(B)(4).

1 C. The provisions of this Subpart shall not apply to health benefit plans
 2 in the large groups as defined in R.S. 22:1091(B)(13) or to the large group
 3 market as defined in R.S. 22:1091(B)(14).

4 D. The provisions of this Subpart shall not apply to limited or excepted
 5 benefits policies as defined in this Title.

6 SUBPART F-1. LOUISIANA GUARANTEED BENEFITS POOL

7 §1131. Short title

8 This Subpart shall be known and may be cited as the "Louisiana
 9 Guaranteed Benefits Pool Act".

10 §1132. Definitions

11 As used in this Subpart, the following definitions apply:

12 (1) "Commissioner" means the commissioner of insurance.

13 (2) "Program" means the Louisiana Guaranteed Benefits Pool.

14 §1133. Louisiana Guaranteed Benefits Pool; establishment

15 A. The commissioner shall establish the Louisiana Guaranteed Benefits
 16 Pool which shall be a risk-sharing program to provide payment to health
 17 insurance issuers for claims for healthcare services provided to eligible
 18 individuals with expected high healthcare costs for the purpose of lowering
 19 premiums for health insurance coverage offered in the individual market.

20 B. In establishing the program, the commissioner shall do all of the
 21 following:

22 (1) Examine Louisiana's historical experience with the Louisiana Health
 23 Plan high risk pool, R.S. 22:1201 et seq.

24 (2) Consult with healthcare consumers, health insurance issuers, and
 25 other interested stakeholders.

26 (3) Take into consideration high-cost health conditions and other health
 27 trends that generate a high cost.

28 §1134. Operation of program

29 A. The commissioner shall establish the Louisiana Guaranteed Benefits
 30 Pool with a framework and operation similar to other state best practices.

1 B. The program may be administered by either the commissioner or by
2 an independent nonprofit organization.

3 §1135. Actuarial analysis

4 In establishing the program, the commissioner shall commission an
5 actuarial analysis to do all of the following:

6 (1) Inform the development and parameters of the program.

7 (2) Evaluate how funds that may currently be utilized to pay the Health
8 Insurance Provider Fee (HIPF) or may be recovered pursuant to litigation
9 related to the HIPF may be used to contribute to the funding of the guaranteed
10 benefits pool.

11 (3) Estimate the necessary funding required to reach the premium
12 reduction goals of the program, taking into consideration all of the above-listed
13 sources.

14 §1136. Program parameters

15 In establishing the program, the commissioner shall provide for all of the
16 following:

17 (1) The criteria for individuals to be eligible for participation in the
18 program.

19 (2) The development and use of health status statements with respect to
20 eligible individuals.

21 (3) The standards for qualification, including but not limited to all of the
22 following:

23 (a) The identification of health conditions that automatically qualify
24 individuals as eligible individuals at the time of application for health insurance
25 coverage.

26 (b) A process pursuant to which health insurance issuers may voluntarily
27 qualify individuals who do not automatically qualify as eligible individuals at
28 the time of application for coverage.

29 (4) The percentage of the premiums paid to health insurance issuers for
30 health insurance coverage by eligible individuals that shall be collected and

1 deposited to the credit and available for the use of the program.

2 (5) The threshold dollar amount of claims for eligible individuals after
 3 which the program will provide payments to health insurance issuers and the
 4 proportion of the claims above the threshold dollar amount that the program
 5 will pay.

6 §1137. Approval by legislature

7 A. The commissioner shall submit the actuarial analysis required by R.S.
 8 22:1135 to the Joint Legislative Committee on the Budget.

9 B. The Joint Legislative Committee on the Budget shall meet to review
 10 and approve the actuarial analysis, the details of the program as determined by
 11 the commissioner, and any required funding. The committee may also take any
 12 other action with respect to the program deemed necessary by the committee.

13 §1138. Enrollment or participation limitation

14 The commissioner shall not enroll an individual or permit any individual
 15 to participate as an eligible individual in the program unless the commissioner
 16 has received written notification from the attorney general of a final and
 17 definitive ruling by a court of competent jurisdiction that the federal Patient
 18 Protection and Affordable Care Act, P.L. 111-148, is unconstitutional pursuant
 19 to R.S. 22:1122.

20 Section 2.(A) The commissioner of insurance shall take all such actions as are
 21 necessary to commission the actuarial analysis required by R.S. 22:1135, as enacted by
 22 Section 1 of this Act, before August 1, 2019.

23 (B) The commissioner of insurance shall submit the actuarial analysis as required by
 24 R.S. 22:1137, as enacted by Section 1 of this Act, and shall submit a report containing a
 25 detailed description of the proposed Louisiana Guaranteed Benefits Pool program to the
 26 Joint Legislative Committee on the Budget on or before March 1, 2020.

27 (C) Upon receipt of the actuarial analysis and report, the Joint Legislative Committee
 28 on the Budget shall meet at the next available opportunity to review and approve the
 29 actuarial analysis, the details of the program as determined by the commissioner, and any
 30 required funding pursuant to R.S. 22:1137, as enacted by Section 1 of this Act.

1 Section 3. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____