

2018 Regular Session

HOUSE BILL NO. 472

BY REPRESENTATIVE THIBAUT

INSURANCE: Establishes the Louisiana Health Reinsurance Association

1 AN ACT

2 To enact Part I of Chapter 19 of Title 22 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 22:2461 through 2471, and to repeal R.S. 22:1641(1)(j), relative  
4 to a state reinsurance program; to create the Louisiana Health Insurance Innovation  
5 and Stabilization Program; to establish the Louisiana Health Reinsurance  
6 Association; to provide for membership; to provide for fee assessments under the  
7 authority of the commissioner; to provide for licensure and registration of certain  
8 regulated entities; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part I of Chapter 19 of Title 22 of the Louisiana Revised Statutes of 1950,  
11 comprised of R.S. 22:2461 through 2471, is hereby enacted to read as follows:

12 CHAPTER 19. LOUISIANA HEALTH INSURANCE INNOVATION

13 AND STABILIZATION PROGRAM

14 PART I. LOUISIANA HEALTH REINSURANCE ASSOCIATION

15 §2461. Legislative findings; purpose

16 A.(1) The legislature finds there is a need to provide for a stable and  
17 economically viable individual health insurance market in the state of Louisiana. The  
18 individual health insurance market serves a vital need for the state's residents who  
19 do not have access to employer-sponsored health insurance or other forms of health  
20 care coverage. Health insurance in the individual market can be the last line of

1 defense against the risk of bankruptcy for sick individuals. Since 2012, premium  
2 rates in the individual market have risen double digits year-over-year, which has  
3 forced some Louisiana consumers to exit the market and risk having no health  
4 insurance coverage. Additionally, the number of health insurers doing business in  
5 the individual market has declined dramatically.

6 (2) The purpose of this Chapter is to authorize a means of stabilizing the  
7 individual health insurance market through state-based reinsurance in order to lower  
8 premiums, increase enrollment of consumers in the individual market, increase the  
9 number of health insurers doing business in the individual market, and to prevent a  
10 health insurance premium rate death spiral.

11 B. To provide this stabilization of the individual health insurance market, an  
12 association of health insurance issuers, health maintenance organizations, group  
13 self-insurers, and third-party administrators is hereby created. Members of the  
14 association are subject to a fee assessment promulgated by the commissioner to  
15 provide for a state-based reinsurance fund to stabilize the individual health insurance  
16 market and to carry out the purposes of this Chapter.

17 §2462. Definitions

18 As used in this Chapter:

19 (1) "Association member" means all of the following:

20 (a) Every health insurance issuer that has a certificate of authority to transact  
21 the business of health and accident insurance in this state.

22 (b) Every health maintenance organization as defined in R.S. 22:242.

23 (c) Every third-party administrator as defined in R.S. 22:1641.

24 (d) Every group self-insurer as defined in R.S. 22:452.

25 (2) "Commissioner" means the commissioner of insurance for the state of  
26 Louisiana.

27 (3) "Group market" means the large group market as defined in R.S. 22:1091  
28 and the small group market which offers small group coverage as defined in R.S.  
29 22:1091, when the applicable coverage constitutes major medical insurance.

1           (4) "Individual market" has the same definition as the term defined in R.S.  
2           22:1091, when the applicable coverage constitutes major medical insurance.

3           (5)(a) "Major medical insurance" means all of the following:

4           (i) Services consisting of medical care provided directly through insurance  
5           or reimbursement, or otherwise, and including items and services paid for as medical  
6           care under any hospital or medical service policy or certificate, hospital or medical  
7           service plan contract, preferred provider organization, health maintenance  
8           organization contract, or any contract or policy issued by a health insurance issuer.  
9           Although not exclusive, if any particular form of health plan coverage is subject to  
10           the requirements of Title XXVII of the federal Public Health Service Act relating to  
11           guaranteed availability and guaranteed renewability, or if a particular form of health  
12           plan coverage is subject to the requirements of Title I of the Affordable Care Act, or  
13           is considered minimum essential coverage as defined in Section 5000A of the  
14           Internal Revenue Code, then the health plan constitutes major medical insurance.

15           (ii) The same or similar services defined in Item (i) of this Subparagraph,  
16           when the services are administered by a third-party administrator on behalf of a plan  
17           that is not fully insured by a health insurance issuer, health maintenance  
18           organization, or group self-insurer. For purposes of third-party administrators,  
19           "major medical insurance" shall not include the provision of pharmacy benefits by  
20           a third-party administrator or by a health insurance issuer or health maintenance  
21           organization when the pharmacy benefits provisions do not include comprehensive  
22           coverage.

23           (iii) Any coverage, although not exclusively dispositive as to whether it  
24           constitutes major medical insurance, for which the association member paid  
25           reinsurance contributions under the Transitional Reinsurance Program established  
26           pursuant to Section 1341 of Public Law 111-148.

27           (b) "Major medical insurance" shall not include any of the following:

28           (i) Coverage provided under a contract of Medicare Advantage, Medicare  
29           Supplement, or Medicare Part D.

1           (ii) The Louisiana Medicaid Program.

2           (iii) Excepted benefits as defined in R.S. 22:1061(3).

3           (iv) Coverage offered by the Office of Group Benefits for retirees.

4           (6) "Marketplace" means the health insurance marketplace or insurance  
5 exchange established pursuant to 42 U.S.C. 18031.

6           §2463. Louisiana Health Reinsurance Association

7           A. There is hereby created a nonprofit entity to be known as the Louisiana  
8 Health Reinsurance Association whose legal domicile shall be in the parish of East  
9 Baton Rouge. All members of the association shall be and remain members of the  
10 association as a condition of their authority to transact business in this state. The  
11 association shall perform its functions as authorized by this Chapter and through its  
12 bylaws and plan of operations.

13           B. The association shall be under the supervision of the commissioner as  
14 authorized in R.S. 22:2467. The commissioner shall be provided any records of the  
15 association concerning the operations, budget, and management of the association  
16 upon request.

17           C.(1)(a) Notwithstanding any other provision of law to the contrary, the  
18 association shall not be deemed a department, unit, agency, instrumentality,  
19 commission, or board of the state for any purpose unless specifically set forth in this  
20 Chapter and shall not be subject to laws governing departments, units, agencies,  
21 instrumentalities, commissions, or boards of the state.

22           (b) All debts, claims, obligations, and liabilities of the association, whenever  
23 incurred, shall be the debts, claims, obligations, and liabilities of the association only  
24 and not of the state, its agencies, instrumentalities, officers, or employees.

25           (c) The association shall be subject to the provisions of R.S. 24:513 et seq.  
26 regarding audits by the legislative auditor.

27           (d) The form established by the commissioner pursuant to R.S. 22:2064 for  
28 the financial report shall determine the association's accounting method and basis of

1 financial reporting for all purposes notwithstanding any other provision of law to the  
2 contrary.

3 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the  
4 association shall be subject to the provisions of the Public Records Law, R.S. 44:1  
5 et seq., and the Open Meetings Law, R.S. 42:11 et seq.

6 §2464. Board of directors

7 A. The board of directors of the association shall consist of one  
8 representative appointed by the commissioner, who shall be a resident of the state  
9 of Louisiana, and six members serving terms as established in the bylaws. The six  
10 members shall be elected as follows:

11 (1) One representative chosen by association members who provided major  
12 medical insurance coverage in the individual market for at least the two preceding  
13 years in this state, or who have been certified by the marketplace to offer individual  
14 coverage in this state through the marketplace and have undertaken overt acts to do  
15 so in the upcoming plan year at the time of election.

16 (2) One representative chosen by association members who provided major  
17 medical insurance in the group market for at least the two preceding years in this  
18 state.

19 (3) One representative chosen by association members who are third-party  
20 administrators and group self-insurers in this state, but who do not possess a health  
21 insurance issuer or health maintenance organization license.

22 (4) One representative chosen by association members who are health  
23 maintenance organizations in this state, and who provide major medical insurance  
24 in both the individual and group markets in this state.

25 (5) One representative chosen by association members who are domestic  
26 nonprofit mutual insurers exclusively engaged in the business of providing health,  
27 hospital service, medical, or surgical benefits in this state.

28 (6) One licensed insurance producer who has an accident and health line of  
29 authority and who is primarily and actively engaged in the sale, solicitation, and

1 negotiation of major medical insurance in this state, and who shall be nominated by  
2 the Independent Insurance Agents and Brokers of Louisiana, the Louisiana  
3 Association of Health Underwriters, the Louisiana chapter of the National  
4 Association of Insurance and Financial Advisors, Health Agents for America, Inc.,  
5 and Professional Insurance Agents of Louisiana. The groups making the nominations  
6 shall elect the representative from this seat.

7 B. Vacancies on the board shall be filled for the remainder of an unexpired  
8 term by the same manner in which the board seat is chosen pursuant to this Section.  
9 In the event that two or more board seats are vacant, the commissioner may appoint  
10 interim board members for terms not to exceed sixty calendar days.

11 C. Elections for board members shall be held every four years, which period  
12 shall commence to run following the election of a majority of board members in the  
13 calendar year 2018, except that the association bylaws may stagger the terms of the  
14 first slate of board members elected after the enactment of this Chapter, in order to  
15 prevent all board seats from being vacant at the conclusion of board terms.

16 D. Members of the board may be reimbursed from the assets of the  
17 association for reasonable expenses incurred by them as members of the board of  
18 directors. The members of the board shall otherwise not be compensated by the  
19 association for their services.

20 E. The board of directors shall have the authority to adopt bylaws and any  
21 plan of operations, and to make and decide all matters on behalf of the association.

22 §2465. Powers and duties of the association

23 A. The association may require association members to furnish any data or  
24 information necessary for the levying of a fee assessment by the commissioner upon  
25 the recommendation of the association, and, if necessary and with the approval of  
26 the commissioner, to examine any association member for that purpose. The  
27 association may, with the approval of the commissioner, examine any association  
28 member's books and records if that association member makes any claim for  
29 reinsurance payments from the association.

1           B. The association, through the board of directors, shall formally advise the  
2           commissioner, at least annually, as to the need and the amount of any fee  
3           assessments to be levied pursuant to R.S. 22:2466, and to file suit against any  
4           association member that fails to pay the fee assessment. The purpose of the fee  
5           assessment is to provide reinsurance to association members in the individual  
6           market, in a manner and pursuant to a program as determined by the board, and  
7           consistent with R.S. 22:2466.

8           C. The association may negotiate, apply for, receive, and expend any  
9           pass-through or other funding under a state innovation waiver pursuant to Section  
10          1332 of Public Law 111-148, and any other grant or funding made available by the  
11          state or federal government for the purposes of stabilizing the individual health  
12          insurance market and health insurance rates, reinsurance, or similar efforts to  
13          improve access and pricing for health insurance.

14          D. The association may do any of the following:

15                 (1) Enter into any contracts as are necessary or proper to implement this  
16                 Chapter.

17                 (2) Sue or be sued, including taking any legal actions necessary to recover  
18                 unpaid fee assessments and to settle claims or potential claims against it.

19                 (3)(a) Borrow money to effect the purposes of this Chapter.

20                 (b) Any notes or other evidence of indebtedness of the association not in  
21                 default shall be legal investments for domestic insurers and may be carried as  
22                 admitted assets.

23                 (4) Employ or retain any persons necessary to handle the financial and legal  
24                 transactions of the association, and to perform any other functions necessary and  
25                 proper pursuant to this Chapter.

26                 (5) Take any legal action necessary to avoid payment or recover payment of  
27                 improper claims.

28                 (6) Join other associations or organizations of similar purposes to further the  
29                 purposes of the association.

1           (7) Adopt bylaws and a plan of operations to carry out the functions,  
2           organization, and administration of the association, and any assessment levied by the  
3           association.

4           (8) Refer any association member to the commissioner for sanctions in cases  
5           where the association member has refused to pay any fee assessment or has refused  
6           to furnish data or information as required in this Section.

7           E. Venue in a suit against the association shall be in the Nineteenth Judicial  
8           District, and the association shall not be required to furnish any appeal bond in cases  
9           or controversies that relate to a cause of action arising under this Chapter.

10           §2466. Fee assessments

11           A.(1) For the purposes of providing the funds necessary to carry out the  
12           powers and duties of the association pursuant to this Chapter, the board of directors  
13           shall formally advise the commissioner of the frequency and amount of any fee  
14           assessment. Upon determination that the advice of the board is reasonable and  
15           necessary to carry out the purpose of this Chapter, the commissioner shall  
16           promulgate the fee assessment as a constitutional officer pursuant to Article VII,  
17           Section 2.1(B) of the Constitution of Louisiana.

18           (2) No fee assessment shall be in excess of two dollars and fifty cents per  
19           member per month for every person covered by major medical insurance as provided  
20           for in this Section.

21           (3) Fee assessments shall be due no sooner than ninety days after  
22           promulgation by the commissioner in the Louisiana Register if the promulgation has  
23           no due date stated, and shall accrue interest at ten percent per annum on and after the  
24           due date.

25           (4) The fee assessments shall be paid to the association to carry out the  
26           purpose of this Chapter.

27           B. The board of directors may abate or defer, in whole or in part, the fee  
28           assessment of any association member if, in the opinion of the board, payment of the  
29           assessment would endanger the ability of the association member to fulfill



1 contractual obligations. In the event a fee assessment is abated or deferred, the  
2 amount by which the fee assessment is abated or deferred may be assessed against  
3 the other association members in a manner consistent with the basis for fee  
4 assessments as provided for in this Section and as consistent with the association's  
5 bylaws. Fee assessments that are deferred shall be paid according to a plan approved  
6 by the board, without interest, once the condition that was the cause of the deferment  
7 is rectified.

8 C. Association members may consider costs imposed by the fee assessment  
9 into their rating assumptions and rate setting mechanisms.

10 D.(1) An association member that wishes to protest all or part of a fee  
11 assessment shall pay when due the amount of the fee assessment as set forth in the  
12 notice promulgated by the commissioner. The payment shall be available to meet  
13 association obligations during the pendency of the protest or any subsequent appeal.  
14 Payment shall be accompanied by a statement in writing that the payment is made  
15 under protest and setting forth a brief statement of the grounds for the protest.

16 (2) Within sixty days following the payment of a fee assessment under  
17 protest by an association member, the association shall notify the association  
18 member in writing of the association's determination with respect to the protest  
19 unless the association notifies the association member that additional time is required  
20 to resolve the issues raised by the protest.

21 (3) Within thirty days after the final decision has been made, the association  
22 shall notify the protesting association member in writing of that final decision.  
23 Within sixty days of receipt of notice of the final decision, the protesting association  
24 member may appeal that final action to the commissioner.

25 (4) If the protest or appeal on the fee assessment is upheld by the  
26 commissioner, the amount paid in error or excess shall be returned to the association  
27 member. Interest on a refund due a protesting member shall be paid at the rate  
28 actually earned by the association.

1           E.(1) The commissioner may set the fee assessment, upon the formal advice  
2           of the board, on a per-member per-month basis, which may be calculated based upon  
3           the association member's prior calendar or plan year's population or reasonable  
4           estimates of the association member's current or impending calendar or plan year  
5           population. The per-member per-month population of an association member should  
6           reflect the total number of human beings for whom the association member provided  
7           major medical insurance or similar coverage, as defined in this Chapter.

8           (2) The association may determine whether health plan coverage offered by  
9           an association member constitutes major medical insurance, as defined in this  
10          Chapter.

11          F. In the event that the association has unexpended funds from a fee  
12          assessment, the association shall maintain the funds to reduce future fee assessments  
13          or to finance the operations of the association.

14          G. The commissioner may revoke a fee assessment previously promulgated  
15          pursuant to his authority in the event that a portion of the fee assessment or all of it  
16          would be unnecessary due to the availability of an alternate source of funding for the  
17          objectives of this Chapter.

18          §2467. Powers of the commissioner

19          A. In addition to the duties and powers enumerated elsewhere in this  
20          Chapter, and in other provisions of law, the commissioner may do any of the  
21          following:

22                 (1) Sanction any association member that fails to fulfill lawfully imposed  
23                 obligations pursuant to this Chapter, which shall constitute an unfair trade practice,  
24                 in the manner as authorized in R.S. 22:1969.

25                 (2) Suspend or revoke, after compliance with R.S. 49:961, the authority of  
26                 any association member to transact business in this state if the association member  
27                 fails to pay a fee assessment or fails to comply with the bylaws or plan of operations.  
28                 The commissioner may also levy a fee or fine on any association member not to  
29                 exceed ten percent of the unpaid assessment.

1           (3) Authorize the association to apply for a state innovation waiver pursuant  
2           to Section 1332 of Public Law 111-148.

3           §2468. Interim powers of the commissioner

4           A. Immediately following the establishment of the association and prior to  
5           the election of the board of directors, the commissioner may direct the operations of  
6           the association.

7           B. The commissioner shall house and staff the association in the office of  
8           health, life, and annuity within the Department of Insurance, until an initial fee  
9           assessment is levied to finance the association's administrative costs and the  
10          association is capable of carrying out its functions and duties.

11          C. The commissioner may levy the initial fee assessment without the formal  
12          advice of the board if the board fails to do so by June 1, 2018.

13          D. The commissioner may adopt interim bylaws and an interim plan of  
14          operations until the board adopts permanent bylaws and a plan of operations.

15          §2469. Examination of the association

16          The association shall be subject to financial examination by the  
17          commissioner. The board of directors shall submit to the commissioner each year,  
18          not more than one hundred twenty days after the end of the fiscal year of the  
19          association, a financial report in a form approved by the commissioner and a report  
20          of its activities during the same period.

21          §2470. Immunity

22          There shall be no liability on the part of, and no cause of action of any kind  
23          whatever shall arise against, any association member or its agents or employees, the  
24          association or its agents or employees, members of the board of directors, or the  
25          commissioner or his representatives, for any action or omission by them in the  
26          performance of their powers and duties pursuant to this Chapter. Immunity shall  
27          extend to the participation in any organization of one or more other state associations  
28          of similar purposes and to any such organization and its agents or employees.

1        §2471. Effect of fee assessment on rates

2                A. Any association member required to pay a fee assessment pursuant to this  
 3        Chapter may, if the association member has not accounted for the fee assessment in  
 4        the association member's rate assumptions or contracted terms for any calendar or  
 5        plan year, increase premiums, or administrative fees in the case of a third-party  
 6        administrator, during the plan or policy year in direct proportion of the cost of the  
 7        fee assessment to the association member.

8                B. Notwithstanding any provision of law to the contrary, no state agency,  
 9        including the Office of Group Benefits, shall be required to pay the fee assessment  
 10        for coverage offered through the Office of Group Benefits to its active employees  
 11        and their dependents. The fee assessment shall be applied to and paid by the active  
 12        employees, be collected in the same manner as active employee contributions are  
 13        collected, and thereafter remitted to the association.

14        Section 2. R.S. 22:1641(1)(j) is hereby repealed in its entirety.

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

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 472 Re-Reengrossed

2018 Regular Session

Thibaut

**Abstract:** Creates the La. Health Reinsurance Assoc. and authorizes the commissioner of insurance to assess a fee on behalf of the association.

Proposed law sets forth legislative findings and the purpose of proposed law.

Proposed law defines "association member", "group market", "individual market", "major medical insurance", and "marketplace".

Proposed law establishes the La. Health Reinsurance Assoc. as a nonprofit entity for the purpose of stabilizing the individual health insurance market. Provides for the legal

domicile of the association, supervision by the commissioner of insurance, financial duties and powers, and meeting requirements.

Proposed law provides that the board of directors of the association shall consist of one representative appointed by the commissioner, who shall be a resident of the state of La., and six members elected by various groups of association members.

Proposed law provides for the filling of vacancies on the board, regular election of board members, reimbursement for reasonable expenses, and authority of the board.

Proposed law provides for the powers and duties of the association and establishes venue for a suit against the association.

Proposed law requires the board of directors, for the purposes of providing the funds necessary to carry out the powers and duties of the association, to formally advise the commissioner of the frequency and amount of any proposed fee assessment. Proposed law further requires the commissioner, upon determination that the advice of the board is reasonable and necessary, to promulgate the fee assessment.

Proposed law provides that the purpose of the assessment is to provide reinsurance to association members in the individual market.

Proposed law provides for the maximum fee assessment amount, the procedures for payment or payment in protest of the fee assessment, and the revocation of a fee assessment.

Proposed law provides for the powers of the commissioner of insurance including sanctioning an association member and the suspension or revocation of an association member's authority to do business in this state for failure to pay a fee assessment.

Proposed law provides for the interim powers of the commissioner of insurance prior to establishment of the association and the election of the board of directors.

Proposed law provides for limited liability for actions performed pursuant to proposed law.

Proposed law authorizes any association member required to pay a fee assessment, if the association member has not accounted for the fee assessment in its rate assumptions or contracted terms for any calendar or plan year, to increase premiums, or administrative fees in the case of a third-party administrator, during the plan or policy year in direct proportion of the cost of the fee assessment to the association member.

Present law defines "third-party administrators" and provides exceptions to the definition.

Proposed law retains present law but repeals the exception for a person who acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to federal law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 22:2461-2471; Repeals R.S. 22:1641(1)(j))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Delete proposed law relative to health care sharing ministries.

2. Decrease the per member per month fee from \$5.00 to \$2.50.
3. Make technical changes.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Limit the exclusion of the coverage of the Office of Group Benefits from the association and its fee assessment to the coverage offered to retirees.
2. Apply the fee assessment to the coverage offered by the Office of Group Benefits to active employees and dependents, but specify that the fee assessment shall not be paid by any state agency, including the office, but shall be paid by the active employees and collected in the same manner as active employee contributions are collected.
3. Remove the tax exemption for the association from payment of fees and taxes levied by the state or any of its subdivisions.
4. Remove the Public Records Law exemption including specific provisions regarding confidential, trade secret, and proprietary documents and information.
5. Remove specific provisions regarding executive sessions of the association.

The House Floor Amendments to the reengrossed bill:

1. Clarify that all excepted benefits as defined in present law are excluded from the definition of major medical insurance.
2. Clarify that the fee assessment maximum applies to every person covered by major medical.
3. Change the due date for fee assessments from not less than 30 days from the date of promulgation to no sooner than 90 days from the date of promulgation.
4. Provide that the due date in proposed law applies only if the fee promulgation does not specify a due date.
5. Clarify that the per-member per-month population comprises all members provided major medical insurance or similar coverage.
6. Make technical changes.