

2021 Regular Session

SENATE BILL NO. 83

BY SENATOR TALBOT

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

INSURANCE DEPARTMENT. Provides relative to the Health Reinsurance Association of Louisiana. (8/1/21)

1 AN ACT

2 To enact Part II of Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, to be

3 comprised of R.S. 22:2481 through 2491, and to repeal R.S. 22:1641(1)(j), relative

4 to the Health Reinsurance Association of Louisiana; to provide for legislative

5 findings, purpose, definitions, and the board of directors; to provide for the powers

6 and duties of the association, fee assessments, and the powers of the commissioner;

7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part II of Chapter 20 of Title 22 of the Louisiana Revised Statutes of

10 1950, to be comprised of R.S. 22:2481 through 2491, is hereby enacted to read as follows:

11 **PART II. LOUISIANA HEALTH REINSURANCE ASSOCIATION**

12 **§2481. Legislative Findings; purpose**

13 **A.(1) The legislature finds there is a need to provide for a stable and**

14 **economically viable individual health insurance market in the state of**

15 **Louisiana. The individual health insurance market serves a vital need for the**

16 **state's residents who do not have access to employer-sponsored health insurance**

17 **or other forms of health care coverage. Health insurance in the individual**

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

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

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

19 §2482. Definitions

20 As used in this Part:

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

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

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

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

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

27 (2) "Commissioner" means the commissioner of insurance for the state
28 of Louisiana.

29 (3) "Group market" means the large group market as defined in R.S.

1 22:1091 and the small group market which offers coverage for a small group as
2 defined in R.S. 22:1091, when the applicable coverage constitutes major medical
3 insurance.

4 (4) "Individual market" as defined in R.S. 22:1091, when the applicable
5 coverage constitutes major medical insurance.

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

7 (i) Services consisting of medical care provided directly through
8 insurance or reimbursement including items and services paid for as medical
9 care under a hospital or medical service policy or certificate, hospital or medical
10 service plan contract, preferred provider organization, health maintenance
11 organization contract, or any contract or policy issued by a health insurance
12 issuer. Although not exclusive, if any particular form of health plan coverage
13 is subject to the requirements of Title XXVII of the federal Public Health
14 Service Act 42 U.S.C.A. 201 et seq., relating to guaranteed availability and
15 guaranteed renewability, or if a particular form of health plan coverage is
16 subject to the requirement of Title I of the Affordable Care Act P.L. 111-148,
17 or is considered minimum essential coverage as defined in 26 U.S.C.A. 5000 A,
18 then the health plan constitutes major medical insurance.

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

27 (iii) Any coverage, although not exclusively dispositive as to whether it
28 constitutes major medical insurance, for which the association member paid
29 reinsurance contributions under the transitional reinsurance program

1 established pursuant to 42 U.S.C.A. 18061.

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

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

5 (ii) The Louisiana Medicaid Program.

6 (iii) Coverage offered by the office of group benefits for retirees.

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

9 §2483. Louisiana Health Reinsurance Association

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

16 B. The association shall be under the supervision of the commissioner
17 of insurance as provided in R.S. 22:2487. The commissioner shall be provided
18 any records of the association concerning the operations, budget, and
19 management of the association upon written request.

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

25 (b) All debts, claims, obligations, and liabilities of the association,
26 whenever incurred, shall be the debts, claims, obligations, and liabilities of the
27 association only and not of the state or its agencies, instrumentalities, officers,
28 or employees.

29 (c) The association is subject to the provisions of R.S. 24:513 et seq.

1 regarding audits by the legislative auditor.

2 (d) A form similar to the form established by the commissioner pursuant
3 to R.S. 22:2064 as to the Louisiana Insurance Guaranty Association shall be
4 established by the commissioner which shall determine the association's
5 accounting method and basis of financial reporting for all purposes
6 notwithstanding any other provision of law to the contrary.

7 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
8 the association shall be subject to the provisions of the Public Records Law, R.S.
9 44:1 et seq., and the Open Meetings Law, R.S. 42:11 et seq.

10 §2484. Board of directors

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

15 (1) One representative chosen by association members who provided
16 major medical insurance coverage in the individual market for at least the two
17 preceding years in this state, or who have been certified in the marketplace to
18 offer individual coverage in this state through the marketplace and have
19 undertaken coverage in the upcoming plan year at the time of election.

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

23 (3) One representative chosen by association members who are
24 third-party administrators and group self-insurers in this state, but who are not
25 licensed as a health insurance issuer or health maintenance organization.

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

29 (5) One representative chosen by association members who are domestic

1 nonprofit mutual insurers exclusively engaged in the business of providing
2 health, hospital service, medical, or surgical benefits in this state.

3 (6) One licensed insurance producer who has an accident and health line
4 of authority and who is primarily and actively engaged in the sale, solicitation,
5 and negotiation of major medical insurance in this state. The Independent
6 Insurance Agents and Brokers of Louisiana, the Louisiana Association of Health
7 Underwriters, the Louisiana chapter of the National Association of Insurance
8 and Financial Advisors, Health Agents for America, Inc., and Professional
9 Insurance Agents of Louisiana shall each nominate a person for this position
10 and those entities making the nominations shall elect the representative for this
11 position on the board.

12 B. Vacancies on the board shall be filled for the remainder of an
13 unexpired term by the same manner in which the board seat is chosen under
14 this Section. If two or more board seats become vacant, the commissioner of
15 insurance may appoint interim board members for terms not to exceed sixty
16 calendar days.

17 C. Elections for board members shall be held every four years, which
18 period shall commence to run following the election of a majority of board
19 members in the 2021 calendar year, except that the association bylaws may
20 provide for staggered terms for the initial board members elected after
21 August 1, 2021, in order to prevent all board seats from being vacant at the
22 conclusion of board terms.

23 D. Members of the board may be reimbursed from the assets of the
24 association for reasonable expenses incurred as members of the board of
25 directors and shall not receive compensation from the association for their
26 service on the board.

27 E. The board of directors may adopt bylaws and a plan of operations to
28 decide all matters on behalf of the association.

29 §2485. Powers and duties of the association

1 A. The association may require association members to furnish any data
2 or information necessary for the levying of a fee assessment by the
3 commissioner of insurance upon the recommendation of the association, and,
4 if necessary, upon approval of the commissioner, to examine any association
5 member for purposes of the assessment. The association may, with the approval
6 of the commissioner, examine any association member's books and records if
7 that association member makes any claim for reinsurance payments from the
8 association.

9 B. The board of directors shall formally advise the commissioner, at
10 least annually, as to the need and the amount of any fee assessments to be levied
11 pursuant to R.S. 22:2486, and may file suit against any association member
12 failing to pay the fee assessment. The fee assessment shall be used to provide
13 reinsurance to association members in the individual market, in a manner and
14 pursuant to a program as determined by the board, and consistent with R.S.
15 22:2486.

16 C. The association may negotiate, apply for, receive, and expend any
17 pass-through or other funding under a state innovation waiver pursuant to 42
18 U.S.C.A. 18052, and any other grant or funding made available by the state or
19 federal government for the purposes of stabilizing the individual health
20 insurance market and health insurance rates, reinsurance, or similar efforts to
21 improve access and pricing for health insurance.

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

23 (1) Enter into any contracts as are necessary or proper to implement this
24 Part.

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

28 (3)(a) Borrow money to effect the purposes of this Part.

29 (b) Any notes or other evidence of indebtedness of the association not in

1 default shall be legal investments for domestic insurers and may be carried as
2 admitted assets.

3 (4) Employ or retain any persons necessary to handle the financial and
4 legal transactions of the association, and to perform any other functions
5 necessary and proper pursuant to this Part.

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

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

10 (7) Adopt bylaws and a plan of operation to carry out the functions,
11 organization, and administration of the association, and any assessment levied
12 by the association.

13 (8) Refer any association member to the commissioner of insurance for
14 sanctions in cases where the association member has refused to pay any fee
15 assessment or has refused to furnish data or information as required in this
16 Part.

17 E. Venue in a suit against the association shall be in the Nineteenth
18 Judicial District, and the association shall not be required to furnish any appeal
19 bond in cases or controversies that relate to a cause of action arising under this
20 Part.

21 §2486. Fee assessments

22 A.(1) For the purposes of providing the funds necessary to carry out the
23 powers and duties of the association pursuant to this Part, the board of
24 directors shall formally advise the commissioner of the frequency and amount
25 of any fee assessment. Upon determination that the advice of the board is
26 reasonable and necessary to carry out the purpose of this Part, the
27 commissioner shall promulgate the fee assessment as a constitutional officer
28 pursuant to Article VII, Section 2.1(B) of the Constitution of Louisiana.

29 (2) No fee assessment shall be in excess of two dollars and fifty cents per

1 member per month for every person covered by major medical insurance as
2 provided for in this Section.

3 (3) Assessments shall be due no sooner than ninety days after
4 promulgation by the commissioner in the Louisiana Register if the
5 promulgation has no due date stated and shall accrue interest at ten percent per
6 annum on and after the due date.

7 (4) The assessments shall be paid to the association to carry out the
8 purposes of this Part.

9 B. The board of directors may abate or defer, in whole or in part, the
10 assessment of any association member if, in the opinion of the board, payment
11 of the assessment would endanger the ability of the association member to fulfill
12 contractual obligations. If a fee assessment is abated or deferred, the amount by
13 which the fee assessment is abated or deferred may be assessed against the other
14 association members in a manner consistent with the basis for fee assessments
15 as provided in this Section and as consistent with the association's bylaws.
16 Assessments that are deferred shall be paid according to a plan approved by the
17 board, without interest, once the condition that was the cause of the deferment
18 is rectified.

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

21 D.(1) An association member that wishes to protest all or part of an
22 assessment shall pay when due the amount of the assessment as set forth in the
23 notice promulgated by the commissioner. The payment shall be available to
24 meet association obligations during the pendency of the protest or any
25 subsequent appeal. Payment shall be accompanied by a written statement that
26 the payment is made under protest and setting forth a brief statement of the
27 grounds for the protest.

28 (2) Within sixty days following the payment of an assessment under
29 protest by an association member, the association shall notify the association

1 member in writing of the association's determination with respect to the protest
2 unless the association notifies the association member that additional time is
3 required to resolve the issues raised by the protest.

4 (3) Within thirty days after the final decision has been made, the
5 association shall notify the protesting association member in writing of the final
6 decision. Within sixty days of receipt of notice of the final decision, the
7 protesting association member may appeal the final action to the commissioner.

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

12 E.(1) The commissioner may set the fee assessment, upon the formal
13 advice of the board, on a per-member per-month basis, which may be calculated
14 based upon the association member's prior calendar or plan year's population
15 or reasonable estimates of the association member's current or impending
16 calendar or plan year population. The per-member per-month population of an
17 association member should reflect the total number of human beings for whom
18 the association member provided major medical insurance or similar coverage,
19 as defined in this Part.

20 (2) The association may determine whether health plan coverage offered
21 by an association member constitutes major medical insurance, as defined in
22 this Part.

23 F. If the association has unexpended funds from a fee assessment, the
24 association shall maintain the funds to reduce future fee assessments or to
25 finance the operations of the association.

26 G. The commissioner may revoke a fee assessment previously
27 promulgated pursuant to his authority if a portion of the fee assessment or all
28 of it would be unnecessary due to the availability of an alternate source of
29 funding for the objectives of this Part.

1 **§2487. Powers of the commissioner**

2 **A. In addition to the duties and powers enumerated elsewhere in this**
3 **Part, and in other provisions of law, the commissioner may do any of the**
4 **following:**

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

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

13 **(3) Authorize the association to apply for a state innovation waiver**
14 **pursuant to 42 U.S.C.A. 18052.**

15 **§2488. Interim powers of the commissioner**

16 **A. Immediately following the establishment of the association and prior**
17 **to the election of the board of directors, the commissioner may direct the**
18 **operations of the association.**

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

23 **C. The commissioner may levy the initial fee assessment without the**
24 **formal advice of the board if the board fails to give formal advice by**
25 **June 1, 2022.**

26 **D. The commissioner may adopt interim bylaws and an interim plan of**
27 **operations until the board adopts permanent bylaws and a plan of operations.**

28 **§2489. Examination of the association**

29 **The association shall be subject to financial examination by the**

1 commissioner. The board of directors shall submit to the commissioner each
2 year, not more than one hundred twenty days after the end of the fiscal year of
3 the association, a financial report in a form approved by the commissioner and
4 a report of its activities during the same period.

5 §2490. Immunity

6 There is no liability on the part of, and no cause of action of any kind
7 shall arise against, any association member or its agents or employees, the
8 association or its agents or employees, members of the board of directors, or the
9 commissioner or his representatives, for any action or omission by them in the
10 performance of their powers and duties pursuant to this Part. Immunity shall
11 extend to the participation in any organization of one or more other state
12 associations of similar purposes and to any organization and its agents or
13 employees.

14 §2491. Effect of fee assessment on rates

15 A. Any association member required to pay a fee assessment pursuant
16 to this Part may, if the association member has not accounted for the fee
17 assessment in the association member's rate assumptions or contracted terms
18 for any calendar or plan year, increase premiums, or administrative fees in the
19 case of a third-party administrator, during the plan or policy year in direct
20 proportion of the cost of the fee assessment to the association member.

21 B. Notwithstanding any provision of law to the contrary, no state
22 agency, including the office of group benefits, shall be required to pay the fee
23 assessment for coverage offered through the office of group benefits to its active
24 employees and their dependents. The fee assessment shall be applied to, and
25 paid by, the active employees, be collected in the same manner as active
26 employee contributions are collected, and thereafter remitted to the association.

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

