

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senators Hoofman and Smith

A Bill

SENATE BILL 274

For An Act To Be Entitled

"THE COMPREHENSIVE DISABILITY INSURANCE RISK POOL
ASSOCIATION ACT"

Subtitle

"THE COMPREHENSIVE DISABILITY INSURANCE
RISK POOL ASSOCIATION ACT"

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Short title.

This act shall be known and may be cited as the "Comprehensive
Disability Insurance Risk Pool Association Act."

SECTION 2. Purpose.

It is the purpose of the General Assembly to establish a mechanism to
allow the availability of a disability insurance program and to allow the
availability of disability and accident insurance coverage to those citizens
of this state who, because of health conditions, cannot secure such coverage.

SECTION 3. Definitions.

As used in this act, the following words shall have the meaning
ascribed herein unless the context clearly requires otherwise:

(a) "Association" means the Comprehensive Disability Insurance Risk
Pool Association.

(b) "Board" means the board of directors of the association.

(c) "Disability insurance" means insurance of human beings against
bodily injury, disablement, or death by accident or accidental means, or the
expense thereof, or against disablement or expense resulting from sickness,

1 and every insurance appertaining thereto. The term does not include any
2 *policy covering short-term accidents only, liability coverage, general*
3 *liability and medicare supplement policies, a fix-indemnity policy, a limited*
4 benefit policy, medical payment coverage or personal injury protection
5 coverage in a motor vehicle policy, coverage issued as a supplement to
6 liability insurance or workers_ compensation.

7 (d) "Insurer" means any *health maintenance organization*, insurance
8 company or any nonprofit health care services plan authorized in this state
9 to write direct disability insurance policies and contracts supplement to
10 disability insurance policies or any third party administrator.

11 (e) "Medicare" means coverage under both Parts A and B of Title XVIII
12 of the Social Security Act, 42 U.S.C., Section 1395 et seq., as amended.

13 (f) "Plan" means the disability insurance plan adopted by the board
14 pursuant to this act.

15 (g) "Agent" means a person who is licensed to sell disability
16 insurance in this state or a third party administrator.

17 (h) "Covered person" means the primary insured or employee (excluding
18 dependents) under each policy, contract or certificate.

19 (i) "Third party administrator" means any entity who is paying or
20 processing disability insurance claims for any Arkansas resident.

21

22 SECTION 4. Participation by insurers; availability of policies for
23 sale.

24 (1) Every insurer shall participate in the association.

25 (2) The requirements of this act shall become effective upon its
26 passage and approval. The policies shall be available for sale January 1,
27 1996.

28

29 SECTION 5. Eligibility for coverage; maximum lifetime benefits;
30 termination of coverage; unfair trade practice by insurers, agents or
31 brokers, or employers.

32 (1) No person who has not been a legal resident of this state for
33 twenty-four (24) consecutive months prior to application is eligible for
34 coverage under this plan. Except the board shall develop a procedure for
35 eligibility for coverage by the association for any natural person who

1 changes his domicile to this state and who at the time domicile is
2 established in this state is insured by an organization similar to the
3 association. The eligible maximum lifetime benefits for such covered person
4 shall not exceed the lifetime benefits available through the association,
5 less any benefits received from a similar organization in the former
6 domiciliary state.

7 (2) No person who is currently receiving disability care benefits
8 under any federal or state program providing financial assistance and/or
9 preventive and rehabilitative social services is eligible for coverage under
10 the plan.

11 (3) No person who is covered under the plan and terminates the
12 coverage is again eligible for coverage unless twelve (12) months have
13 elapsed since the person_s latest termination.

14 (4) No person on whose behalf the plan has paid out two hundred fifty
15 thousand dollars (\$250,000) in covered benefits is eligible for coverage
16 under the plan. The lifetime maximum shall be two hundred fifty thousand
17 dollars (\$250,000).

18 (5) The coverage of any person who ceases to meet the eligibility
19 requirements of this section may be terminated at the end of the policy
20 period.

21 (6) No person is eligible for coverage under the plan unless such
22 person has been rejected by three (3) licensed insurers for coverage
23 substantially similar to the plan coverage without material underwriting
24 restriction at a rate equal to or less than the association plan rate, and no
25 person is eligible for coverage under the plan if such person has, on the
26 date of issue of coverage under the plan, equivalent coverage under another
27 contract or policy.

28 (7) It shall constitute an unfair trade practice for any insurer,
29 insurance agent or broker, or employer, to refer an individual employee to
30 the association, or to arrange for an individual employee to apply to the
31 program, for the purpose of separating such employee from a group disability
32 benefits plan provided in connection with the employee_s employment.

33

34 SECTION 6. Creation of association; membership; board of directors;
35 adoption of plan, articles, bylaws and operating rules.

1 (1) There is hereby created a nonprofit legal entity to be known as
2 the "Comprehensive Disability Insurance Risk Pool Association." All
3 insurers, as a condition of doing business, shall be members of the
4 association.

5 (2)(a) The association shall operate subject to the supervision and
6 approval of a nine-member board of directors consisting of:

7 (i) Four (4) members appointed by the *Governor*. Two (2)
8 of the *Governor's* appointees shall be chosen from the general public and
9 shall not be associated with the medical profession, a hospital or an
10 insurer. One (1) appointee shall be representative of medical providers.
11 One (1) appointee shall be representative of disability insurance agents.
12 Any board member appointed by the *Governor* may be removed and replaced by him
13 at any time without cause.

14 (ii) Three (3) members appointed by the participating
15 insurers, at least one (1) of whom is a nonprofit insurer and one (1) of whom
16 is a domestic insurer.

17 (iii) The Chairman of the Senate Insurance and Commerce
18 Committee and the Chairman of the House Insurance and Commerce Committee, or
19 their designees, who shall be nonvoting, ex officio members of the board.

20 (iv) Of those members appointed by the *Governor*, one (1)
21 shall serve for a term of one (1) year, two (2) for a term of two (2) years,
22 and one (1) for a term of three (3) years. Of those members appointed by the
23 participating insurers, one (1) shall serve for a term of one (1) year, one
24 (1) shall serve for a term of two (2) years, and one (1) shall serve for a
25 term of three (3) years. The appointing authority shall designate the period
26 of service of each initial appointee at the time of appointment.

27 (v) All terms after the initial term shall be for a period
28 of three (3) years.

29 (b) The board of directors shall elect one (1) of its members as
30 chairman.

31 (c) Board members, except those Board members who are also
32 members of the General Assembly, may be reimbursed from moneys of the
33 association for actual and necessary expenses incurred by them as members in
34 the manner and amount as provided for State employees, but shall not
35 otherwise be compensated for their services.

1 (d) Board members who are also members of the General Assembly
2 shall be entitled to per diem and mileage at the rate prescribed by law for
3 legislative joint interim committees, to be paid from funds appropriated for
4 per diem and mileage for members of the joint interim committees.

5 (3) The association shall adopt a plan pursuant to this act and submit
6 its articles, bylaws and operating rules to the Insurance Department for
7 approval. If the association fails to adopt such plan and suitable articles,
8 bylaws and operating rules within ninety (90) days after the appointment of
9 the board, the Insurance Department shall adopt rules to effectuate the
10 provisions of this act; and such rules shall remain in effect until
11 superseded by a plan and articles, bylaws and operating rules submitted by
12 the association and approved by the Insurance Department.

13 (4) Individual board members shall not be liable and shall be immune
14 from suit at law or equity for any conduct performed in good faith and which
15 is within the subject matter over which they have been given jurisdiction.

16

17 SECTION 7. General powers and duties of association; liability of
18 Insurance Commissioner, administrator, board of directors, etc.; powers and
19 duties of Insurance Department.

20 (1) The association shall:

21 (a) Establish administrative and accounting procedures for the
22 operation of the association.

23 (b) Establish procedures under which applicants and participants
24 in the plan may have grievances reviewed by an impartial body and reported to
25 the board.

26 (c) Select an administering insurer in accordance with Section 8
27 of this act.

28 (d) Collect the assessment provided in Section 9 of this act
29 from insurers and third-party administrators for claims paid under the plan
30 and for administrative expenses incurred or estimated to be incurred during
31 the period for which the assessment is made. The level of payments shall be
32 established by the board. This assessment shall be collected pursuant to the
33 plan of operation approved by the board. In addition to the collection of
34 such assessment, the association shall collect an organizational assessment
35 or assessments from all insurers as necessary to provide for expenses which

1 have been incurred or are estimated to be incurred prior to receipt of the
2 first calendar year assessments. Organizational assessments shall be equal
3 in amount for all insurers, but shall not exceed one hundred dollars (\$100)
4 per insurer for all such assessments. Assessments are due and payable within
5 thirty (30) days of receipt of the assessment notice by the insurer.

6 (e) Require that all policy forms issued by the association
7 conform to standard forms developed by the association. The forms shall be
8 approved by the Insurance Department.

9 (f) Develop and implement a program to publicize the existence
10 of the plan, the eligibility requirements for the plan, and the procedures
11 for enrollment in the plan and to maintain public awareness of the plan.

12 (2) The association may:

13 (a) Exercise powers granted to insurers under the laws of this
14 state.

15 (b) Take any legal actions necessary or proper for recovery of
16 any moneys due the association under the provisions of this act. There shall
17 be no liability on the part of and no cause of action of any nature shall
18 arise against the Insurance Commissioner or any of his staff, the
19 administrator, the board of its directors, agents or employees, or against
20 any participating insurer for any actions performed in accordance with the
21 provisions of this act.

22 (3) The Insurance Department shall examine and investigate the
23 association and make an annual report to the General Assembly. Upon such
24 investigation, the Insurance Commissioner, if he deems necessary, shall
25 require the board: (a) to contract with an outside independent actuarial
26 firm to assess the solvency of the association and for consultation as to the
27 sufficiency and means of the funding of the association, and the enrollment
28 in and the eligibility, benefits and rate structure of the benefits plan to
29 ensure the solvency of the association; and (b) to close enrollment in the
30 benefits plan at any time upon a determination by the outside independent
31 actuarial firm that funds of the association are insufficient to support the
32 enrollment of additional persons. In no case shall the commissioner require
33 such actuarial study any less than once every two (2) years.

34

35 SECTION 8. Selection of plan administrator, term, powers and duties,

1 and compensation of administrator.

2 (1) The board shall select an insurer, through a competitive bidding
3 process, to administer the plan. The board shall evaluate bids submitted
4 under this subsection based on criteria established by the board, which
5 criteria shall include:

6 (a) The insured_s proven ability to handle large group accident
7 and disability insurance.

8 (b) The efficiency of the insurer_s claims-paying procedures.

9 (c) An estimate of total charges for administering the plan.

10 (2) The administering insurer shall serve for a period of three (3)
11 years. At least one (1) year prior to the expiration of each three-year
12 period of service by an administering insurer, the board shall invite all
13 insurers, including the current administering insurer, to submit bids to
14 serve as the administering insurer for the succeeding three-year period. The
15 selection of the administering insurer for the succeeding period shall be
16 made at least six (6) months prior to the end of the current three-year
17 period.

18 (3) The administering insurer shall:

19 (a) Perform all eligibility and administrative claims-payment
20 functions relating to the plan.

21 (b) Establish a premium-billing procedure for collection of
22 premiums from insured persons. Billings shall be made periodically as
23 determined by the board.

24 (c) Perform all necessary functions to assure timely payment of
25 benefits to covered persons under the plan, including:

26 (i) Making available information relating to the proper
27 manner of submitting a claim for benefits under the plan and distributing
28 forms upon which submissions shall be made.

29 (ii) Evaluating the eligibility of each claim for payment
30 under the plan.

31 (iii) Notifying each claimant within forty-five (45) days
32 after receiving a properly completed and executed proof of loss whether the
33 claim is accepted, rejected or compromised.

34 (iv) The board shall establish reasonable reimbursement
35 amounts for any services covered under the benefit plans.

1 (d) Submit regular reports to the board regarding the operation
2 of the plan. The frequency, content and form of the reports shall be as
3 determined by the board.

4 (e) Following the close of each calendar year, determine net
5 premiums, reinsurance premiums less administrative expense allowance, the
6 expense of administration pertaining to the reinsurance operations of the
7 association, and the incurred losses of the year and report this information
8 to the association and the Insurance Department.

9 (f) Pay claims expenses from the premium payments received from
10 or on behalf of covered persons under the plan. If the payments by the
11 administering insurer for claims expenses exceed the portion of premiums
12 allocated by the board for payment of claims expenses, the board shall
13 provide the administering insurer with additional funds for payment of claims
14 expenses.

15 (4)(a) The administering insurer shall be paid, as provided in the
16 contract of the association, for its direct and indirect expenses incurred in
17 the performance of its services.

18 (b) As used in this subsection, the term "direct and indirect
19 expenses" includes that portion of the audited administrative costs, printing
20 expenses, claims administration expenses, management expenses, building
21 overhead expenses and other actual operating and administrative expenses of
22 the administering insurer which are approved by the board as allocable to the
23 administration of the plan and included in the bid specifications.

24

25 SECTION 9. Assessments against insurers.

26 (1) Each insurer shall be assessed an amount not to exceed one dollar
27 (\$1.00) per covered person per month. There shall not be such assessment on
28 any insurer on policies or contracts insuring federal or state employees.

29 (2) If assessments and other receipts by the association, board or
30 administering insurer exceed the actual losses and administrative expenses of
31 the plan, the excess shall be held at interest and used by the board to
32 offset future losses or to reduce plan premiums.

33 As used in this subsection, the term "future losses" includes reserves
34 for claims incurred but not reported.

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1 SECTION 10. Insurance of plan coverage; issuance of policies.

2 The coverage provided by the plan shall be directly insured by the
3 association, and the policies shall be issued through the administering
4 insurer. *The Insurance Commissioner shall have financial and regulatory*
5 *oversight of the plan, policies and rates. The Insurance Commissioner shall*
6 *have the authority to take whatever regulatory actions are necessary to*
7 *assure the financial solvency of the plan.*

8

9 SECTION 11. Coverage; rates; exclusion for preexisting conditions;
10 other sources primary.

11 (1) Coverage offered.

12 (a) The plan shall offer in an annually renewable policy the
13 coverage specified in this section for each eligible person.

14 (b) Any person whose disability insurance coverage is
15 involuntarily terminated for any reason other than nonpayment of premium may
16 apply for coverage under the plan. If such coverage is applied for within
17 sixty (60) days after the involuntary termination and if premiums are paid
18 for the entire period of coverage, the effective date of the coverage shall
19 be the date of termination of the previous coverage.

20 (c) No coverage shall be issued to a person who is eligible for
21 Medicare benefits.

22 (2) Major medical expense coverage. The plan shall offer major
23 medical expense coverage to every eligible person who is not eligible for
24 Medicare. Major medical expense coverage offered under the plan shall be
25 benefits as established by the board. The maximum limit under this paragraph
26 shall not be altered by the board, and no actuarially equivalent benefit may
27 be substituted by the board.

28 (3) Rates for coverages issued by the association may not be
29 unreasonable in relation to the benefits provided, the risk experience and
30 the reasonable expenses of providing the coverage.

31 (a) Separate schedules of premium rates based on age may apply
32 for individual risks.

33 (b) Rates are subject to approval by the Insurance Department.

34 (c) Standard risk rates for coverages issued by the association
35 shall be established by the association, subject to approval by the

1 department, using reasonable actuarial techniques, and shall reflect
2 anticipated experiences and expenses of such coverages for standard risks.
3 This subparagraph (c) shall stand repealed July 1, 1999.

4 (d) The rating plan established by the association shall
5 initially provide for rates equal to one hundred fifty percent (150%) of the
6 average standard risk rates. Any changes in the initial rates shall be based
7 on experience of the plan and shall reflect reasonably anticipated losses and
8 expenses. This subparagraph (d) shall stand repealed July 1, 1999.

9 (e) No rate shall exceed *two hundred percent (200%)* of the
10 standard risk rate. This subparagraph (e) shall stand repealed July 1, 1999.

11 (4) If the covered costs incurred by the eligible person exceed the
12 deductible for major medical expense coverage selected by the person in a
13 policy year, the plan shall pay at least eighty percent (80%) of any
14 additional covered costs incurred by the person during the policy year.

15 (5) Preexisting conditions. An association policy may contain
16 provisions under which coverage is excluded during a period of twelve (12)
17 months following the effective date of coverage with respect to a given
18 covered individual for any preexisting condition, as long as:

19 (a) The condition manifested itself within a period of six (6)
20 months before the effective date of coverage;

21 (b) Medical advice or treatment was recommended or received
22 within a period of six (6) months before the effective date of coverage.

23 (6) Other sources primary.

24 (a) The coverage provided by the association shall be considered
25 excess coverage, and benefits otherwise payable under association coverage
26 shall be reduced by all hospital and medical expense benefits paid or payable
27 under any workers_ compensation coverage, automobile medical payment or
28 liability insurance whether provided on the basis of fault or nonfault, and
29 by any hospital or medical benefits paid or payable by any insurer or
30 insurance arrangement or any hospital or medical benefits paid or payable
31 under or provided pursuant to any state or federal law or program.

32 (b) No amounts paid or payable by Medicare or any other
33 governmental program or any other insurance, or self-insurance maintained in
34 lieu of otherwise statutorily required insurance, may be made or recognized
35 as claims under such policy or be recognized as or towards satisfaction of

1 applicable deductibles or out-of-pocket maximums or to reduce the limits of
2 benefits available.

3 (c) The association shall have a cause of action against a
4 participant for any benefits paid to the participant which should not have
5 been claimed or recognized as claims because of the provisions of this
6 subsection or because otherwise not covered.

7

8 SECTION 12. This act entitled "Comprehensive Disability Insurance Risk
9 Pool Association Act" shall stand repealed as of December 31, 1999.

10

11 SECTION 13. All provisions of this act of a general and permanent
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
13 Code Revision Commission shall incorporate the same in the Code.

14

15 SECTION 14. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

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21 SECTION 15. All laws and parts of laws in conflict with this act are
22 hereby repealed.

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/s/Hoofman et al

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