



# EVERY TEXAN

Formerly Center for Public Policy Priorities

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Senate Business and Commerce Committee

Via email by Stacey Pogue, Senior Policy Analyst, Every Texan, [pogue@everytexan.org](mailto:pogue@everytexan.org)

**Re: Every Texan comments related to SB 874**

Dear Chairman Hancock and Committee members:

We are writing to provide context on SB 874, scheduled for a hearing in the Senate Business and Commerce Committee tomorrow. Every Texan is neutral on the bill. The bill extends the temporary authority in Texas Insurance Code (TIC) Ch. 1510 for another 2-years, similar to bills passed in the last two legislative session. TIC Ch. 1510 both recognizes an opportunity for states under the Affordable Care Act (ACA) – flexibility and federal funding available through “1332 waivers” —and the threat posed to the ACA’s preexisting condition protections by the lawsuit led by the Texas Attorney General.

Extending temporary authority in Ch. 1510 for the Texas Department of Insurance (TDI) to study and apply for a 1332 waiver is beneficial. Please see our attached Business and Commerce interim charge written comments from October for more background on 1332 waivers. Using this same authority under last session’s bill, TDI contracted with actuaries to analyze the impact a 1332 waiver would have in Texas. We are hopeful that the Legislature will receive this analysis soon, so it can inform your discussions. Ongoing discussions of a 1332 waiver in Texas need to address two important items:

1. TDI can continue to study and even apply for a 1332 waiver with the extended authority in SB 874, but it cannot operate a program under the waiver unless the legislature establishes an ongoing funding mechanism for the waiver’s state share. Most states fund their share of a 1332 waiver through an assessment on health plans. We included a summary table of how other states have funded their share of 1332 waiver programs in [our interim charge comments to](#) the House Insurance Committee last fall.
2. The just enacted American Rescue Plan Act (ARPA) increases subsidies available in the Health Insurance Marketplace for 2 years. This will make coverage more affordable both for people with modest incomes who were previously eligible for subsidies as well as people with higher incomes (over 400% of the federal poverty level), who are newly eligible for financial help with Marketplace coverage. This second group, people with incomes over 400% of poverty, are the same ones who would have been the primary beneficiaries of a 1332 reinsurance waiver. Given the 2-year Marketplace subsidy boost in ARPA, implementing a 1332 reinsurance waiver prior to 2023 [is likely inadvisable](#).

SB 874 also grants a 2-year extension of authority for TDI to take initial steps to re-establish Texas’ pre-ACA “high-risk pool” or something “substantially similar” in the event the ACA is overturned by the courts.

Ch. 1510 does not authorize nor create a mechanism to fund coverage from the high-risk pool, but instead allows TDI to take initial steps like appointing a board and adopting a plan of operation. Returning to a high-risk pool like the old one Texas had would be an inadequate way to protect Texans with preexisting conditions if the ACA is overturned. The old high-risk pool was a lifeline for the small number of people who could afford its expensive coverage, but it was [never funded or structured to](#) be a meaningful coverage option for most uninsured Texans with preexisting conditions. Notably, the old high-risk pool covered only about 28,000 Texans at its peak, premiums were generally twice the market rate, and treatment for preexisting conditions was excluded for some enrollees. Please see our attached comparison of Texas' pre-ACA high-risk pool to the ACA protections for people with preexisting conditions for more information.

Should you have any questions about these comments, please let me know.

Sincerely,  
Stacey Pogue

## Comparing two approaches for preexisting condition protections: Affordable Care Act (ACA) protections and Texas’ pre-ACA “high-risk pool”

Preexisting conditions are common. More than 1-in-4 Texans under age 65 has a preexisting condition – like high blood pressure, high cholesterol, diabetes or asthma – that would have resulted in a denial of coverage if buying coverage on one’s own prior to the Affordable Care Act (ACA).<sup>1</sup> Polling shows Texans across party lines overwhelmingly support the ACA’s requirement that health insurance companies provide coverage to people with pre-existing health conditions.<sup>2</sup>

A U.S. Supreme Court decision in *California v. Texas* –Texas’ lawsuit seeking to overturn the entire ACA, including its preexisting condition protections – is expected before the end of June and could come out during the 87th Legislative Session.

The ACA contains several consumer protections that work together to prohibit discrimination in health coverage based on preexisting conditions as shown below. Prior to the ACA, Texas had a “high-risk pool,” which allowed certain people with preexisting conditions to buy expensive coverage, in some cases subject to a 12-month waiting period before preexisting conditions were covered. In most cases, premiums were twice the market price. At its peak, it covered only about 28,000 Texans because it was simply unaffordable for most people.<sup>3</sup> For the few Texans who could afford high-risk pool coverage, it was a lifeline, but it came nowhere close to prohibiting discrimination or providing a broad and meaningful coverage option for people with preexisting conditions.

### Comparing approaches for preexisting condition protections

	Affordable Care Act	Old Texas High-risk Pool
No coverage denials due to health status	✓	✓
Can’t be charged more due to health status	✓	✗
No exclusions or limits on treatment of preexisting conditions	✓	✗
No lifetime or annual limits	✓	✗
Essential health benefits covered	✓	✗
Coverage has an annual cap on enrollee out-of-pocket costs	✓	✓
Discrimination prohibited in plan design and marketing	✓	✗

<sup>1</sup> Kaiser Family Foundation, “Pre-Existing Condition Prevalence for Individuals and Families,” October 4, 2019, <https://www.kff.org/health-reform/issue-brief/pre-existing-condition-prevalence-for-individuals-and-families/>.

<sup>2</sup> Episcopal Health Foundation, “Texas Residents’ Views on State and National Health Policy Priorities,” March 2019, [https://www.episcopalhealth.org/wp-content/uploads/2020/01/Texas\\_Residents\\_Views\\_on\\_State\\_and\\_National\\_Health\\_Policy\\_Priorities\\_2019\\_RVSD.pdf](https://www.episcopalhealth.org/wp-content/uploads/2020/01/Texas_Residents_Views_on_State_and_National_Health_Policy_Priorities_2019_RVSD.pdf).

<sup>3</sup> Every Texan, “Remembering the Bad Old Days of High-Risk Pools,” May 2017, <https://everytexan.org/2017/05/01/remembering-the-bad-old-days-of-high-risk-pools/>.