



EVERY TEXAN

Formerly Center for Public Policy Priorities

To: House Committee on Insurance and Senate Committee and Business and Commerce
From: Stacey Pogue, senior policy analyst with Every Texan (formerly CPPP)
Date: April 6, 2021
Re: **Reject HB 3924/SB 1973 - Farm Bureau plans. Making discrimination against Texans with preexisting conditions legal again will not satisfy an unmet need for uninsured Texans**

HB 3924/SB 1973 would make preexisting condition discrimination legal once again for a certain type of health coverage. Nearly [9-in-10 Texans](#) (88%) think health plans should be required to cover people with preexisting conditions, including overwhelming majorities across party lines.

Since 2014, the Affordable Care Act made it illegal for health insurance to discriminate against people with preexisting medical conditions. Insurers can no longer:

- deny coverage to people with a history of illness,
- charge higher rates to people with preexisting conditions, or
- cover the individual, but exclude all health care services related to a preexisting condition either forever or for a defined period of months or years.

HB 3924/SB 1973 deliberately define the new Farm Bureau coverage as not “insurance” in the law, even though it’ll operate just like health insurance. This [is all it takes](#) to evade all state and federal laws related to health insurance, **including preexisting condition protections** enshrined in law. The coverage will also evade both the state and federal prohibitions against surprise medical billing, network adequacy, and many other popular consumer protections.

Five other states have already taken this unwise step, and it is clear that these plans cherry-pick healthy people and discriminate against others with a history of illness or injury (see the table below). Coverage will not be limited to farmers and ranchers. Anyone can join the Farm Bureau by paying an annual membership fee and then apply for the coverage.

Votes taken on these bills may be the first ones taken at the Texas Legislature to reintroduce preexisting condition discrimination since it became illegal in 2014.

Preexisting conditions are common

More than [1 in 4 Texas adults](#) under age 65 have a preexisting condition – like diabetes, heart disease, or asthma – that would have resulted in being denied individual health coverage before the Affordable Care Act.

Farmers and ranchers appear far more likely to have a preexisting medical conditions. In a [2017 survey](#) by the U.S. Department of Agriculture, 2-in-3 farmers and ranchers (64%) reported having at least one preexisting condition. This means a substantial share of farmers and ranchers who look to buy a Farm Bureau plan will face a denial, higher rates, or a waiting period before coverage fully kicks in.

Farm Bureau plans offer cheaper coverage by screening out less-healthy people

There are essentially only three ways for health coverage to cost 30-50% less, as Farm Bureau health plans in other states advertise:

1. Cover only healthier people,
2. Offer very skimpy coverage that leaves out expensive categories of coverage, like hospitalization or prescription drugs and/or place dollar caps or other limits on covered benefits, and/or
3. Get unheard-of deals to reduce amounts paid to hospitals, doctors, and drug manufacturers that beat what even big, national insurance companies can negotiate.

Farm Bureau plans rely on the first strategy above. In each of the five states that have authorized non-insurance Farm Bureau plans, coverage is cheaper because enrollment is limited to healthier people, as shown in the table on the last page.

- Farm Bureau plans use extensive “medical underwriting.” Applicants must fill out a lengthy health history questionnaire and submit medical records. Plans use this information to deny coverage outright, or charge higher rates to people in less-than-perfect health.
- Most of these plans utilize two other discriminatory, pre-ACA relics: preexisting condition waiting periods and “exclusion riders”. Most Farm Bureau plans make all enrollees pay monthly premiums while waiting 6-12 months for coverage of treatment for any preexisting condition to kick in. On top of that, certain enrollees will only be offered coverage with an exclusion rider, which indefinitely excludes coverage related to a specified preexisting condition.
- The Iowa Farm Bureau plan has a \$3 million lifetime limit. Enrollees who get a serious diagnosis or injury face the risk of “running out” of coverage. Traditional health insurers are prohibited from using lifetime limits.

With such extensive use of discriminatory tactics, it is easy to see how cheaper coverage is available to the healthier people who are allowed in.

Comprehensive coverage got much more affordable for many uninsured Texans just this month

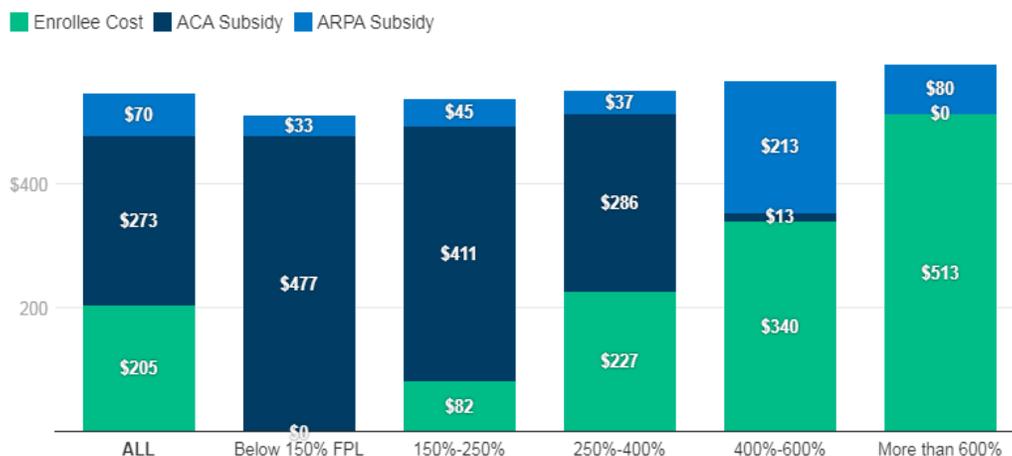
In recent years, it has been particularly challenging for middle-income individuals who aren't offered job-based health insurance to find comprehensive coverage, including coverage of preexisting conditions, at an affordable price. Starting in April 2021, the just-enacted American Rescue Plan Act makes Health Insurance Marketplace coverage substantially more affordable for many uninsured Texans.

Nearly [1.3 million](#) Texans signed up for 2021 Marketplace coverage, and [9-in-10](#) Texans with Marketplace coverage get subsidies to lower their monthly premiums. Nationally, a notable share –24% – of farmers and ranchers age 18-64 [report](#) they have Marketplace coverage. Yet many subsidy-eligible Texans have not signed up, in part because subsidies were often insufficient to make coverage affordable. The just-enacted American Rescue Plan Act (ARPA) addresses two Marketplace affordability issues above with a 2-year [boost to subsidies](#):

- ARPA increases the financial help available to people with lower incomes who already qualified for Marketplace subsidies (incomes between 100-400% of poverty or an individual earning about \$12,900-\$51,500/year). [Sixty-two percent](#) of non-elderly uninsured Texans have incomes in this range. Enhanced ARPA subsidies for people with these more modest incomes will generally make **comprehensive** Marketplace coverage more affordable than skimpier options, including Farm Bureau plans.
- For the first time, ARPA extends Marketplace subsidies to people with incomes above 400% of the poverty level (about \$51,500/year for an individual and \$106,000/year for a family of four). This ends the “subsidy cliff,” that made premiums sharply more expensive for individuals earning over 400% of the federal poverty level, particularly for people ages 50-65. Only 15% of uninsured Texans have incomes over 400% of the poverty level.

The Kaiser Family Foundation chart below shows how the additional ARPA subsidies will bring down what Americans with individual market coverage must pay on average for a Silver-tier plan across different income brackets. The elimination of the subsidy cliff makes coverage much more affordable for enrolled individuals with incomes from 400-600% of poverty (from about \$51,500-77,300/year).

Average Premium Cost and Subsidy Among Current Individual Market Enrollees Under American Rescue Plan Act



NOTE: Premiums shown reflect the second-lowest cost silver plan. Average premiums in the chart rise with income because higher income enrollees tend to be older and thus have higher premiums on average. Prior to the ARPA, California was the only state to offer premium subsidies to people making over 400% of poverty.

SOURCE: KFF analysis of 2019 American Community Survey. • PNG



Source: Kaiser Family Foundation, March 2021, <https://www.kff.org/health-reform/issue-brief/how-the-american-rescue-plan-act-affects-subsidies-for-marketplace-shoppers-and-people-who-are-uninsured/>

Farm Bureau plans will not be affordable for Texans who would qualify for Medicaid Expansion

Texas is one of the few remaining states where uninsured workers with incomes below the poverty line – like farm workers, grocery store clerks, home health aides, day care workers, and waiters – typically are not eligible for any affordable health insurance options. Texas can and should fix that [by expanding](#)

[Medicaid](#) to cover adults with incomes below 138% of the poverty level (about \$18,000/year for an individual and \$30,000/year for a family of three). That would make an estimated [1.4 million](#) uninsured, low-wage Texas adults eligible for Medicaid health insurance, which is designed to be affordable to people with very low incomes. Farm Bureau plans, even if sold at half the cost of traditional insurance, would be unaffordable for individuals with incomes low enough to qualify for Medicaid expansion.

Farm Bureau plans don't satisfy an unmet need in the market for coverage

Farm Bureau plans cannot be justified as uniquely filling a market niche—finally helping healthier uninsured people find affordable plans. There are many cheap coverage options already on the market that are available only to healthier people: short-term plans, fixed-indemnity plans, and health care sharing ministries. Each of these are for sale now, deny or limit coverage to people with preexisting conditions, and are heavily advertised as significantly cheaper than traditional health insurance. In other words, legislative action to create non-insurance through the Farm Bureau does not address an unmet need in the market.

Farm Bureau plans drive up the cost of comprehensive coverage for people who need it

In other states, Farm Bureau plans have been painted as merely one more option that could be right for some uninsured people, but coverage that cherry-picks healthy customers is not simply benign. Like all products that deny or limit coverage to people with preexisting conditions, Farm Bureau plans cause “adverse selection,” meaning they siphon healthier customers away from the risk pool for traditional insurance, where insurers can't reject less healthy customers. As the risk pool for traditional insurance becomes older and sicker on average, premiums rise for people who want or need comprehensive insurance or who are, or would be, rejected by Farm Bureau-like plans.

This is not merely a theoretical threat. Farm Bureau plans have contributed to substantial adverse selection against the traditional individual health insurance market in Tennessee, where Farm Bureau plans have existed the longest. [Actuaries note](#) that Tennessee's traditional individual market has the worst risk score (reflecting the highest cost enrollees) and some of the highest rate increases in the nation. Tennessee Farm Bureau plans have contributed to the poor risk pool and big rate increases in traditional coverage, in part because the tactics it uses to screen out less healthy applicants has helped it excel in attracting and keeping healthy enrollees.

Texas Legislators should reject Farm Bureau-like plans, *not vote to make preexisting conditions discrimination legal once again*

Texas has the highest uninsured rate in the nation, and it's getting worse, posing an additional challenge for Texas' recovery from the COVID-19 pandemic and the acute financial crisis it has created. The single most meaningful step Texas can take to address its high uninsured rate is to expand Medicaid. Medicaid expansion, along with the enhanced Marketplace subsidies that just took effect from the American Rescue Plan Act, would make comprehensive insurance that covers preexisting conditions affordable to millions of uninsured Texans who are not offered or cannot afford job-based health insurance.

Authorizing Farm Bureau plans or any other insurance-like plans explicitly designed to evade all state and federal health insurance laws is not a good solution to cover uninsured Texans. These plans don't fill an unmet need; cheaper, more-limited coverage is readily available to healthy Texans with no legislative action required. These plans will, however, harm the market for comprehensive health insurance and drive up costs for Texans with preexisting conditions who rely on it.

Farm Bureau plans discriminate against people with preexisting conditions

State	Year authorized	Preexisting condition discrimination in plans sold
Tennessee	1993	<p>Must fill out a 13-page application that requests an extensive medical history and submit medical records from doctors. Can be denied coverage outright or charged more for preexisting conditions.</p> <p>If enrolled, care for preexisting conditions will not be covered for at least 6-12 months, depending on which plan is picked</p> <p>If enrolled, care for a specific preexisting condition can also be excluded indefinitely through an “exclusion rider.”</p>
Iowa	2018	<p>Must provide extensive medical history information at application. Can be denied coverage outright or charged more for preexisting conditions.</p> <p>All plans have a \$3 million lifetime limit</p>
Kansas	2019	<p>Must pass medical underwriting and submit medical records from doctors. Can be denied coverage outright or charged more for preexisting conditions.</p> <p>If enrolled, care for preexisting conditions will not be covered for at least 6-12 months, depending on which plan you pick.</p> <p>If enrolled, care for a specific preexisting condition can also be excluded indefinitely through an “exclusion rider.”</p>
Indiana	2020	<p>Must pass medical underwriting and some applicants must submit medical records from doctors. Can be denied coverage outright or charged more for preexisting conditions.</p> <p>If enrolled, care for preexisting conditions will not be covered for at least 6-12 months and possibly even longer, depending on which plan you pick.</p> <p>If enrolled, care for a specific preexisting condition can also be excluded indefinitely through an “exclusion rider.”</p>
South Dakota	2021	<p>Plans not yet available, but they will deny coverage to people with preexisting conditions.</p>