

BILL ANALYSIS

C.S.H.B. 3550
By: Muñoz, Jr.
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that vision plan companies are harming small business optometrists and their patients by improperly interfering with the doctor-patient relationship. The parties assert that some of these companies require optometrists to disclose confidential medical diagnoses of their patients in order for the optometrist to remain in compliance with plan rules. The parties are concerned that these companies then use this information to market the companies to purchasers at the expense of patient privacy. Furthermore, the parties report that some vision plan companies also require optometrists to use an optical laboratory the vision plan owns, even when the optometrist knows that a different lab can produce glasses for a patient more quickly, at a lower price, and with better craftsmanship and quality control.

The parties point out that current state law prohibits manufacturers, wholesalers, and retailers of ophthalmic goods from controlling certain aspects of an optometrist's judgment or practice, which protects patients by preventing these entities from improperly attempting to influence the optometrist. However, as vision plan companies have begun to own manufacturing, wholesale, and retail operations in the eye care industry, the parties contend that the prohibition needs to be updated to specifically include vision plans. C.S.H.B. 3550 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3550 amends the Insurance Code to prohibit a managed care plan from directly or indirectly controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist; from employing an optometrist or therapeutic optometrist if part of the optometrist's or therapeutic optometrist's duties involves the practice of optometry or therapeutic optometry; from paying an optometrist or therapeutic optometrist for a service not provided; from restricting or limiting an optometrist's or therapeutic optometrist's choice of sources or suppliers of services or materials; or from requiring an optometrist or therapeutic optometrist to disclose a patient's confidential or protected health information unless the disclosure is authorized by the patient or is permitted without authorization under the federal Health Insurance Portability and Accountability Act of 1996 or under statutory provisions providing exceptions to the requirement that a covered entity be authorized to disclose nonpublic personal health information before disclosing such information.

C.S.H.B. 3550 establishes that the prohibition against a managed care plan paying an optometrist or therapeutic optometrist for a service that is not provided does not prohibit the use of capitation as a method of payment. The bill establishes that the prohibition against a managed care plan restricting or limiting an optometrist's or therapeutic optometrist's choice of sources or suppliers of services or materials does not restrict or limit a managed care plan's determination of specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories. The bill requires its provisions to be liberally construed to prevent managed care plans from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3550 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 1451.155(b), Insurance Code, is amended to read as follows:

(b) A contract between an insurer and an optometrist or therapeutic optometrist may not:

(1) limit the fee the optometrist or therapeutic optometrist may charge for a product or service that is not a covered product or service; or

(2) include a provision in violation of Section 351.408, Occupations Code.

SECTION 2. Section 351.408, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (b-1) and (c-1) to read as follows:

(a) This section and Sections 351.602(c)(2), 351.603(b), 351.604(3), and 351.605 shall be liberally construed to prevent manufacturers, wholesalers, ~~and~~ retailers of ophthalmic goods, and vision plans from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

(b-1) In this section, "vision plan" means a single or limited service health insurance or managed care plan or similar program that provides or arranges for, or pays benefits

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Subchapter D, Chapter 1451, Insurance Code, is amended by adding Section 1451.156 to read as follows:
Sec. 1451.156. PROHIBITED CONDUCT.

(d) This section shall be liberally construed to prevent managed care plans from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

No equivalent provision.

for, vision examinations, corrective lenses, or other vision or eye health care materials or procedures.

(c) A manufacturer, wholesaler, [or] retailer of ophthalmic goods, or vision plan may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ or contract for the services of an optometrist or therapeutic optometrist if part of the optometrist's or therapeutic optometrist's duties involves the practice of optometry or therapeutic optometry; or

(3) pay an optometrist or therapeutic optometrist for a service not provided.

(c-1) In addition to the conduct prohibited under Subsection (c), a vision plan may not directly or indirectly:

(1) restrict or limit an optometrist's or therapeutic optometrist's choice of sources or suppliers of services or materials, including optical laboratories used by the optometrist or therapeutic optometrist to provide services or materials to a patient; or

(2) require an optometrist or therapeutic optometrist to disclose a patient's confidential or protected health information unless the disclosure is directly necessary for the payment of a patient's claim under the vision plan.

No equivalent provision.

No equivalent provision.

SECTION 3. Section 1451.155, Insurance Code, as amended by this Act, applies only to a contract entered into or renewed on or after September 1, 2015. A contract entered into or renewed before September 1, 2015, is governed by the law as it existed immediately before that date, and that law is

(a) A managed care plan may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ an optometrist or therapeutic optometrist if part of the optometrist's or therapeutic optometrist's duties involves the practice of optometry or therapeutic optometry;

(3) pay an optometrist or therapeutic optometrist for a service not provided;

(4) restrict or limit an optometrist's or therapeutic optometrist's choice of sources or suppliers of services or materials, including optical laboratories used by the optometrist or therapeutic optometrist to provide services or materials to a patient; or

(5) require an optometrist or therapeutic optometrist to disclose a patient's confidential or protected health information unless the disclosure is authorized by the patient or permitted without authorization under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) or under Section 602.053.

(b) Subsection (a)(3) does not prohibit the use of capitation as a method of payment.

(c) Subsection (a)(4) does not restrict or limit a managed care plan's determination of specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

SECTION 2. Section 1451.156, Insurance Code, as added by this Act, applies only to a contract between a managed care plan issuer and an optometrist or therapeutic optometrist entered into or renewed, or a managed care plan delivered, issued for delivery, or renewed, on or after September

continued in effect for that purpose.

1, 2015. A contract entered into or renewed, or a plan delivered, issued for delivery, or renewed, before September 1, 2015, is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 4. Section 351.408, Occupations Code, as amended by this Act, applies only to a vision plan that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A vision plan delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(See SECTION 2 above.)

SECTION 5. This Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.