

SUBJECT: Prohibiting liability insurers from considering patient population status

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Taylor, Thompson, Van Arsdale

0 nays

1 absent — Oliveira

WITNESSES: For — Jenny Young, Texas Dental Association

Against — Jay Thompson, Medical Protective Company

BACKGROUND: Medicaid is the state-federal health insurance program for children, low-income families, elderly, and the disabled. The Children's Health Insurance Program (CHIP) is the state-federal health insurance program for children in low-income families who do not qualify for Medicaid.

DIGEST: CSHB 2678 would prohibit insurers from considering whether a health care provider's clientele received Medicaid or CHIP in denying, refusing to renew, canceling, limiting, or determining the rate or premium for medical liability insurance.

The bill would take effect September 1, 2005, and would apply to policies executed on or after January 1, 2006.

SUPPORTERS SAY: Insurers should not be able to discriminate against providers who see Medicaid and CHIP patients. Insurers do not ask if providers see other low-income patients, so asking about Medicaid and CHIP specifically is discriminatory. The type of practice, the geographic location, and a provider's claims history go into the calculations, which should be sufficient to fairly and adequately assess the risk an insurer assumes when writing a policy.

Dentists, in particular, have been hit hard by this discriminatory practice. One insurer recently changed its policies to capture dentists who see a

large number of Medicaid clients and refused to renew their policies. The claims records alone of individual dentists should be a good indication of future risk, so this practice clearly was discriminatory.

Already Texas has a shrinking pool of providers willing to see Medicaid clients. State reimbursement for services has dwindled over recent years, and it is increasingly difficult for providers to cover their fixed expenses with the level of payment they receive for Medicaid visits. Texas should protect the ability of providers to obtain reasonable medical liability coverage.

OPPONENTS
SAY:

Different patient populations bring different levels of risk for standard of practice disputes and potential claims. High caseloads of Medicaid patients have the potential to generate more claims than other populations because the low reimbursement rate may cause providers to cut corners in standards of care. Insurers assume risk from providers and should be permitted to look at factors that indicate future risk.

Dentists are not unfairly being targeted. One insurance company had two large claims because a dentist inappropriately performed services on two children who were Medicaid clients that resulted in needless complications. Because of that experience, the insurer now inquires about a dentist's caseload, but does not discriminate against providers who have Medicaid or CHIP clients. The insurer simply uses the information to decide if additional information about standards of practice would be required from the provider.

NOTES:

The committee substitute included an effective date of September 1, 2005, instead of an immediate effect clause.