

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1170  
By: Hinojosa  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Managed care organizations control a significant part of most physicians' practices, leaving physicians with little ability to walk away from unfair contracts. This imbalance forces physicians to sign take-it-or-leave-it contracts that are not only bad for the physician and drive up the cost of care, but can also be detrimental to patient care. In some cases, contract provisions may pit economic incentives for the physician against quality care for the patient. In other cases, contract provisions may attempt to nullify or ignore patient protections passed by the legislature.

As proposed, S.B. 1170 requires disclosure of certain contract terms and prohibits certain contracting provisions currently in practice in order to bring transparency and accountability to physician contracts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle F, Title 8, Insurance Code, by adding Chapter 1459, as follows:

#### **CHAPTER 1459. REQUIREMENTS FOR CERTAIN CONTRACTS WITH PHYSICIANS AND HEALTH CARE PROVIDERS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 1459.001. GENERAL DEFINITIONS. Defines "edit," "health benefit plan issuer," "health care contract," "health care contractor," "health care provider," "line of business," "physician," and "procedure code."

Sec. 1459.002. DEFINITION OF MATERIAL CHANGE. Defines "material change."

Sec. 1459.003. APPLICABILITY OF CHAPTER. (a) Sets forth certain contracts or arrangements to which this chapter does not apply.

(b) Provides that this chapter applies to contracts for health care services between a medical group and other medical groups, notwithstanding Subsection (a)(1) or (2).

(c) Provides that this chapter applies to a contract for health care services between a health care contractor and a pharmacy, a pharmacist, or a professional corporation composed of pharmacies or pharmacists as permitted by the laws of the state, notwithstanding Subsection (a)(4).

Sec. 1459.004. CODE OF ETHICS; DISCRIMINATION LAWS. Prohibits this chapter from being used to justify any act or omission by a physician or health care provider that is prohibited by any applicable professional code of ethics or a state or federal law prohibiting discrimination against any person.

[Reserves Sections 1459.005-1459.050 for expansion.]

## SUBCHAPTER B. GENERAL CONTRACT REQUIREMENTS

Sec. 1459.051. REQUIREMENTS FOR REIMBURSEMENT ON DISCOUNTED FEE BASIS. (a) Prohibits a health care contractor from reimbursing a physician or health care provider on a discounted fee basis for covered services furnished to a covered person unless the health care contractor has contracted with certain entities, certain conditions have been met, and certain actions taken.

(b) Provides that a health care contractor is presumed to have submitted timely notice of the contractor's right to reimburse the physician or health care provider on a discounted fee basis for covered services furnished to a covered person if the contractor submits a notice to the physician or provider, before the date on which the contractor purchases the discount, that contains certain information.

(c) Sets forth the methods by which the notice required by Subsection (b) is authorized to be provided.

Sec. 1459.052. WAIVER OF CERTAIN RIGHTS PROHIBITED. Prohibits a health care contractor, except as permitted by this chapter, from requiring, as a condition of contracting, that a physician or health care provider waive any right or benefit to which the physician or health care provider may be entitled under a state or federal law or regulation that provides legal protections to a person solely based on the person's status as a physician or health care provider providing services in this state.

Sec. 1459.053. EFFECT ON NEW PATIENTS. (a) Defines "new patient."

(b) Authorizes a physician or health care provider, on 60 days' notice, to decline to provide service under a health care contract to new patients covered by the health care contractor. Requires the notice to state the reasons for the declination.

Sec. 1459.054. EFFECT OF CONTRACT TERMINATION. Provides that a contract provision concerning compensation or payment of a physician or health care provider does not survive the termination of a health care contract, other than a provision for continuation of coverage required by law or made with the agreement of the physician or health care provider.

Sec. 1459.055. DISCLOSURE TO THIRD PARTY. Prohibits a health care contract from precluding the use of the contract or disclosure of the contract to a third party to enforce this chapter or other state or federal law. Provides that the third party is bound by any applicable confidentiality requirements, including those stated in the contract.

Sec. 1459.056. RIGHT TO TERMINATE CONTRACT. Requires a health care contract to provide to each party a right to terminate the contract without cause on at least 90 days' written notice, in addition to termination rights described under Section 1459.152.

Sec. 1459.057. ARBITRATION AGREEMENTS. Authorizes a health care contract subject to this chapter to include an agreement for binding arbitration.

Sec. 1459.058. ENFORCEMENT. (a) Authorizes a physician or health care provider to exercise private rights of action at law and in equity and to introduce as persuasive authority prior arbitration awards regarding a violation of this chapter. Entitles a physician or health care provider to equitable relief, including injunctive relief, and to reasonable attorney's fees in certain circumstances.

(b) Authorizes an arbitration award related to the enforcement of this chapter to be disclosed to persons who have a bona fide interest in the arbitration.

[Reserves Sections 1459.059-1459.100 for expansion.]

## SUBCHAPTER C. DISCLOSURE OF CONTRACT CHANGES

Sec. 1459.101. NOTICE REGARDING CHANGE TO CONTRACT. (a) Requires a health care contractor to notify each physician and health care provider affected by a change to a health care contract of the change. Requires the notice to include information sufficient for the physician or health care provider to determine the effect of the change.

(b) Provides that a change to a health care contract that is administrative only takes effect on the date stated in the notice, which is prohibited from being earlier than the 30th day after the date of the notice.

(c) Requires a health care contractor to provide notice regarding a material change in the manner prescribed by Section 1459.102 and the contract.

Sec. 1459.102. MATERIAL CHANGES; NOTICE. (a) Authorizes a material change to a contract to be implemented only if the health care contractor provides written notice to the affected physician or health care provider regarding the proposed change at least 90 days before the effective date of the change. Requires the notice to be conspicuously entitled "Notice of Material Change to Contract."

(b) Provides that the material change takes effect in the manner specified in the notice of material change to the contract made under Subsection (a) if the physician or health care provider does not object to the change.

(c) Provides that if the physician or health care provider objects to the material change not later than the 30th day after the date of the notice under Subsection (a), the change does not take effect, and the objection does not constitute a basis on which the health care contractor is authorized to terminate the contract.

[Reserves Sections 1459.103-1459.150 for expansion.]

#### SUBCHAPTER D. DISCLOSURE OF OTHER INFORMATION

Sec. 1459.151. SUMMARY DISCLOSURE FORM. (a) Requires each health care contract to include a summary disclosure form that states, in plain language, certain information.

(b) Provides that the disclosure form is for informational purposes only and is prohibited from being construed as a term or condition of the contract.

(c) Requires the disclosure form to reasonably summarize the applicable contract provisions.

Sec. 1459.152. TERMINATION INFORMATION. (a) Requires a health care contract that provides for termination for cause by either party to state the reasons that may be grounds for termination for cause. Requires the terms to be reasonable.

(b) Requires the contract to state the time by which notice of termination for cause is required to be provided and to whom the notice is required to be given.

Sec. 1459.153. INFORMATION REGARDING UTILIZATION REVIEW AND RELATED PROGRAMS. Requires a health care contractor to identify any utilization review program or management program, quality improvement program, or similar program that the contractor uses to review, monitor, evaluate, or assess the services provided under a contract.

Sec. 1459.154. COMPENSATION INFORMATION; FEE SCHEDULES. (a) Requires the disclosure of payment and compensation terms under Sections 1459.151-1459.153 to include information sufficient for a physician or health care provider to determine the compensation or payment for the physician's or provider's services.

(b) Requires the summary disclosure form under Section 1459.151 to include certain information.

(c) Requires the methodology disclosure under Subsection (b)(2) to include, as applicable, certain information.

(d) Requires the fee schedule described by Subsection (b)(3) to include, as applicable, service or procedure codes and the associated payment or compensation for each code. Authorizes the fee schedule to be provided electronically.

(e) Requires the health care contractor to provide the fee schedule described by Subsection (b)(3) to an affected physician or health care provider when a material change related to payment or compensation occurs. Authorizes a physician or health care provider to request that a written fee schedule be provided up to twice annually, and requires the health care contractor to provide the written fee schedule promptly.

(f) Authorizes a health care contractor to satisfy the requirement under Subsection (b)(4) regarding the effect of edits by providing a clearly understandable, readily available mechanism that allows a physician or health care provider to determine the effect of an edit on payment or compensation before a service is provided or a claim is submitted.

Sec. 1459.155. **REQUIRED INFORMATION AFTER CLAIM PROCESSING.** Requires a health care contractor, on the completion of processing of a claim, to provide information to the affected physician or health care provider stating how the claim was adjudicated and the responsibility of any party other than the contractor for any outstanding balance.

Sec. 1459.156. **PROPOSED CONTRACT; CONFIDENTIALITY.** (a) Requires a health care contractor to provide in writing or make reasonably available the information required under Sections 1459.154 if a proposed contract is presented by the contractor for a physician or health care provider to consider. Requires the information to be disclosed in a manner that allows the physician or health care provider to timely evaluate the proposed payment or compensation for services under the contract if the information is not disclosed in writing.

(b) Provides that the disclosure obligations under this chapter do not prevent a health care contractor from requiring a reasonable confidentiality agreement regarding the terms of a proposed contract.

(c) Authorizes a contract, notwithstanding Subsections (a) and (b), to be modified by operation of law as required by any applicable state or federal law or regulation, and authorizes the health care contractor to disclose this change by any reasonable means.

**SECTION 2.** (a) Makes the application of Chapter 1459, Insurance Code, as added by this Act, prospective to January 1, 2008.

(b) Requires a health care contract in existence before January 1, 2008, to comply with the disclosure requirements of Sections 1459.151, 1459.153, 1459.154, and 1459.155, Insurance Code, as added by this Act, not later than January 31, 2008. Prohibits Chapter 1459, Insurance Code, as added by this Act, from being construed to require the renegotiation of a contract in existence before January 1, 2008.

**SECTION 3.** Effective date: September 1, 2007.