

SUBJECT: Revising insurer and provider practices in preferred provider benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Sanford

1 nay — Romero

WITNESSES: For — Michael Honea, Glen Rose Medical Center; Ezequiel Silva, Texas Medical Association; Adam Bruggeman, Texas Orthopaedic Association; Jeff Lyle; (*Registered, but did not testify*: Jim Pitts, Baylor Scott White; Daniel Chepkaskas, Patient Choice Coalition; Tom Banning, Texas Academy of Family Physicians; Tommy Engelke, Texas Agricultural Cooperative Council; David Reynolds, Texas Chapter of the American College of Physicians; Cameron Duncan, Texas Hospital Association; Clayton Stewart, Texas Medical Association; Adrienne Trigg, Texas Medical Equipment Providers Association; Bobby Hillert, Texas Orthopaedic Association; Jill Sutton, Texas Osteopathic Medical Association; Bonnie Bruce, Texas Society of Anesthesiologists; John Henderson, Torch)

Against — Jamie Dudensing, Texas Association of Health Plans; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Bill Hammond, Texas Employers for Insurance Reform)

On — (*Registered, but did not testify*: Kenisha Schuster, Texas Department of Insurance)

BACKGROUND: Insurance Code sec. 1301.066 prohibits an insurer from taking certain retaliatory actions against a physician or health care provider, including terminating the physician's or provider's participation in the preferred provider benefit plan or refusing to renew the physician's or provider's contract, because the physician or provider has:

- on behalf of the insured, reasonably filed a complaint against the

- insurer; or
- appealed an insurer's decision.

Sec. 1301.1052 requires an insurer to give a preferred provider who disagrees with an insurer's request for a refund an opportunity to appeal that request. Sec. 1301.132 requires an insurer to give a physician or health care provider who disagrees with an insurer's request to recover an overpayment an opportunity to appeal that request. The insurer may not attempt to recover the payment until all appeal rights are exhausted.

Interested parties note that there may be significant gaps in state law regarding claim payments, audits, appeals, and remedies for health care providers, leaving providers vulnerable. Suggestions have been made to address certain regulatory gaps in preferred provider benefit plans.

DIGEST:

CSHB 2929 would revise certain provisions relating to retaliatory actions, clean and audited claims, completed audits, and opportunities for post-audit appeals in preferred provider benefit plans.

Retaliatory actions. The bill would expand the retaliatory actions an insurer could not take against a physician or provider to include:

- implementing measurable penalties in the contract negotiation process;
- engaged in an unfair or deceptive practice;
- arbitrarily reduced the physician's or provider's fees on the insurer's fee schedule; and
- otherwise made changes to material contractual terms that were adverse to the physician or provider.

Completed audits. The bill would prohibit an insurer from recovering a payment on an audited claim until a final audit was completed.

Appeals after audit. The bill would require an insurer to provide a reasonable mechanism for a preferred provider's request to appeal an insurer's request to recover a refund or provider overpayment.

Review of audits. The bill would require the commissioner of the Texas Department of Insurance by rule to establish procedures for a preferred provider to submit a request for the department to review certain audits conducted by an insurer. The department's review of an audit would be a contested case under Government Code ch. 2001.

The bill would take effect September 1, 2021, and would apply only to a claim for payment made on or after the effective date.