

By: Frank, Harless

H.B. No. 711

Substitute the following for H.B. No. 711:

By: Harless

C.S.H.B. No. 711

A BILL TO BE ENTITLED

AN ACT

relating to certain contract provisions and conduct affecting health care provider networks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1458.001, Insurance Code, is amended by adding Subdivisions (1-a), (1-b), (4-a), (4-b), and (5-a) to read as follows:

(1-a) "Anti-steering clause" means a provision in a provider network contract that restricts the ability of a general contracting entity to encourage an enrollee to obtain a health care service from a competitor of the provider, including offering incentives to encourage enrollees to use specific providers.

(1-b) "Anti-tiering clause" means a provision in a provider network contract that:

(A) restricts the ability of a general contracting entity to introduce or modify a tiered network plan or assign providers into tiers; or

(B) requires a general contracting entity to place all members of a provider in the same tier of a tiered network plan.

(4-a) "Gag clause" means a provision in a provider network contract that restricts the ability of a general contracting entity or provider to disclose:

(A) price or quality information, including the

1 allowed amount, negotiated rates or discounts, fees for services,  
2 or other claim-related financial obligations included in the  
3 contract, to a governmental entity as authorized by law or its  
4 contractors or agents, an enrollee, a treating provider of an  
5 enrollee, a plan sponsor, or potential eligible enrollees and plan  
6 sponsors; or

7 (B) out-of-pocket costs to an enrollee.

8 (4-b) "General contracting entity" means a person who  
9 enters into a direct contract with a provider for the delivery of  
10 health care services to covered individuals regardless of whether  
11 the person, in the ordinary course of business, establishes a  
12 provider network for access by another party. The term does not  
13 include a health care provider or facility unless the provider or  
14 facility is entering into the contract in the provider's or  
15 facility's role as a health benefit plan.

16 (5-a) "Most favored nation clause" means a provision  
17 in a provider network contract that:

18 (A) prohibits or grants an option to prohibit:

19 (i) a provider from contracting with  
20 another general contracting entity to provide health care services  
21 at a lower rate; or

22 (ii) a general contracting entity from  
23 contracting with another provider to provide health care services  
24 at a higher rate;

25 (B) requires or grants an option to require:

26 (i) a provider to accept a lower rate for  
27 health care services if the provider agrees with another general

1 contracting entity to accept a lower rate for the services; or

2 (ii) a general contracting entity to pay a  
3 higher rate for health care services if the entity agrees with  
4 another provider to pay a higher rate for the services;

5 (C) requires or grants an option to require  
6 termination or renegotiation of an existing provider network  
7 contract if:

8 (i) a provider agrees with another general  
9 contracting entity to accept a lower rate for providing health care  
10 services; or

11 (ii) a general contracting entity agrees  
12 with a provider to pay a higher rate for health care services; or

13 (D) requires:

14 (i) a provider to disclose the provider's  
15 contractual reimbursement rates with other general contracting  
16 entities; or

17 (ii) a general contracting entity to  
18 disclose the general contracting entity's contractual  
19 reimbursement rates with other providers.

20 SECTION 2. Section [1458.101](#), Insurance Code, is amended by  
21 adding Subsections (g), (h), and (i) to read as follows:

22 (g) A provider may not:

23 (1) offer to a general contracting entity a written  
24 provider network contract that includes an anti-steering,  
25 anti-tiering, gag, or most favored nation clause;

26 (2) enter into a provider network contract that  
27 includes an anti-steering, anti-tiering, gag, or most favored

1 nation clause; or

2 (3) amend or renew an existing provider network  
3 contract previously entered into with a general contracting entity  
4 so that the contract as amended or renewed adds or retains an  
5 anti-steering, anti-tiering, gag, or most favored nation clause.

6 (h) Any provision in a provider network contract that is an  
7 anti-steering, anti-tiering, gag, or most favored nation clause is  
8 void and unenforceable. The remaining provisions in the provider  
9 network contract remain in effect and are enforceable.

10 (i) A health benefit plan issuer that encourages an enrollee  
11 to obtain a health care service from a particular provider,  
12 including offering incentives to encourage enrollees to use  
13 specific providers, or that introduces or modifies a tiered network  
14 plan or assigns providers into tiers has a fiduciary duty to the  
15 enrollee or policyholder to engage in that conduct only for the  
16 primary benefit of the enrollee or policyholder.

17 SECTION 3. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2023.