

By: Frank

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), (1-c), (4-a), (4-b), and (5-a) to read as follows:

(1-a) "All-or-nothing clause" means a provision in a provider network contract that requires a general contracting entity to:

(A) include all members of a provider in a network plan; or

(B) enter into or maintain an additional contract with an affiliate of a provider as a condition of entering into a contract.

(1-b) "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-c) "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

1 assign providers into tiers; or

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

5 (4-a) "Gag clause" means a provision in a provider
6 network contract that restricts the ability of a general
7 contracting entity or provider to disclose:

8 (A) price or quality information, including the
9 allowed amount, negotiated rates or discounts, fees for services,
10 or other claim-related financial obligations included in the
11 contract, to a governmental entity as authorized by law or its
12 contractors or agents, an enrollee, a treating provider of an
13 enrollee, a plan sponsor, or potential eligible enrollees and plan
14 sponsors; or

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

16 (4-b) "General contracting entity" means a person who
17 enters into a direct contract with a provider for the delivery of
18 health care services to covered individuals regardless of whether
19 the person, in the ordinary course of business, establishes a
20 provider network for access by another party.

21 (5-a) "Most favored nation clause" means a provision
22 in a provider network contract that:

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

24 (i) a provider from contracting with
25 another general contracting entity to provide health care services
26 at a lower rate; or

27 (ii) a general contracting entity from

1 contracting with another provider to provide health care services
2 at a higher rate;

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

4 (i) a provider to accept a lower rate for
5 health care services if the provider agrees with another general
6 contracting entity to accept a lower rate for the services; or

7 (ii) a general contracting entity to pay a
8 higher rate for health care services if the entity agrees with
9 another provider to pay a higher rate for the services;

10 (C) requires or grants an option to require
11 termination or renegotiation of an existing provider network
12 contract if:

13 (i) a provider agrees with another general
14 contracting entity to accept a lower rate for providing health care
15 services; or

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

18 (D) requires:

19 (i) a provider to disclose the provider's
20 contractual reimbursement rates with other general contracting
21 entities; or

22 (ii) a general contracting entity to
23 disclose the general contracting entity's contractual
24 reimbursement rates with other providers.

25 SECTION 2. Section 1458.101, Insurance Code, is amended by
26 adding Subsections (g), (h), and (i) to read as follows:

27 (g) A provider may not:

1 (1) offer to a general contracting entity a provider
2 network contract that includes an all-or-nothing, anti-steering,
3 anti-tiering, gag, or most favored nation clause;

4 (2) enter into a provider network contract that
5 includes an all-or-nothing, anti-steering, anti-tiering, gag, or
6 most favored nation clause; or

7 (3) amend or renew an existing provider network
8 contract previously entered into with a general contracting entity
9 so that the contract as amended or renewed adds or retains an
10 all-or-nothing, anti-steering, anti-tiering, gag, or most favored
11 nation clause.

12 (h) Any provision in a provider network contract that is an
13 all-or-nothing, anti-steering, anti-tiering, gag, or most favored
14 nation clause is void and unenforceable. The remaining provisions
15 in the provider network contract remain in effect and are
16 enforceable.

17 (i) A general contracting entity that encourages an
18 enrollee to obtain a health care service from a particular
19 provider, including offering incentives to encourage enrollees to
20 use specific providers, or that introduces or modifies a tiered
21 network plan or assigns providers into tiers has a fiduciary duty to
22 the enrollee to engage in that conduct only for the primary benefit
23 of the enrollee.

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2023.