

1-1 By: Frank, et al. (Senate Sponsor - Kolkhorst) H.B. No. 711
 1-2 (In the Senate - Received from the House April 26, 2023;
 1-3 April 26, 2023, read first time and referred to Committee on Health
 1-4 & Human Services; May 11, 2023, reported favorably by the following
 1-5 vote: Yeas 9, Nays 0; May 11, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain contract provisions and conduct affecting
 1-20 health care provider networks.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1458.001, Insurance Code, is amended by
 1-23 adding Subdivisions (1-a), (1-b), (4-a), (4-b), and (5-a) to read
 1-24 as follows:

1-25 (1-a) "Anti-steering clause" means a provision in a
 1-26 provider network contract that restricts the ability of a general
 1-27 contracting entity to encourage an enrollee to obtain a health care
 1-28 service from a competitor of the provider, including offering
 1-29 incentives to encourage enrollees to use specific providers.

1-30 (1-b) "Anti-tiering clause" means a provision in a
 1-31 provider network contract that:

1-32 (A) restricts the ability of a general
 1-33 contracting entity to introduce or modify a tiered network plan or
 1-34 assign providers into tiers; or

1-35 (B) requires a general contracting entity to
 1-36 place all members of a provider in the same tier of a tiered network
 1-37 plan.

1-38 (4-a) "Gag clause" means a provision in a provider
 1-39 network contract that restricts the ability of a general
 1-40 contracting entity or provider to disclose:

1-41 (A) price or quality information, including the
 1-42 allowed amount, negotiated rates or discounts, fees for services,
 1-43 or other claim-related financial obligations included in the
 1-44 contract, to a governmental entity as authorized by law or its
 1-45 contractors or agents, an enrollee, a treating provider of an
 1-46 enrollee, a plan sponsor, or potential eligible enrollees and plan
 1-47 sponsors; or

1-48 (B) out-of-pocket costs to an enrollee.

1-49 (4-b) "General contracting entity" means a person who
 1-50 enters into a direct contract with a provider for the delivery of
 1-51 health care services to covered individuals regardless of whether
 1-52 the person, in the ordinary course of business, establishes a
 1-53 provider network for access by another party. The term does not
 1-54 include a health care provider or facility unless the provider or
 1-55 facility is entering into the contract in the provider's or
 1-56 facility's role as a health benefit plan.

1-57 (5-a) "Most favored nation clause" means a provision
 1-58 in a provider network contract that:

1-59 (A) prohibits or grants an option to prohibit:

1-60 (i) a provider from contracting with
 1-61 another general contracting entity to provide health care services

2-1 at a lower rate; or
 2-2 (ii) a general contracting entity from
 2-3 contracting with another provider to provide health care services
 2-4 at a higher rate;
 2-5 (B) requires or grants an option to require:
 2-6 (i) a provider to accept a lower rate for
 2-7 health care services if the provider agrees with another general
 2-8 contracting entity to accept a lower rate for the services; or
 2-9 (ii) a general contracting entity to pay a
 2-10 higher rate for health care services if the entity agrees with
 2-11 another provider to pay a higher rate for the services;
 2-12 (C) requires or grants an option to require
 2-13 termination or renegotiation of an existing provider network
 2-14 contract if:
 2-15 (i) a provider agrees with another general
 2-16 contracting entity to accept a lower rate for providing health care
 2-17 services; or
 2-18 (ii) a general contracting entity agrees
 2-19 with a provider to pay a higher rate for health care services; or
 2-20 (D) requires:
 2-21 (i) a provider to disclose the provider's
 2-22 contractual reimbursement rates with other general contracting
 2-23 entities; or
 2-24 (ii) a general contracting entity to
 2-25 disclose the general contracting entity's contractual
 2-26 reimbursement rates with other providers.
 2-27 SECTION 2. Section 1458.101, Insurance Code, is amended by
 2-28 adding Subsections (g), (h), and (i) to read as follows:
 2-29 (g) A provider may not:
 2-30 (1) offer to a general contracting entity a written
 2-31 provider network contract that includes an anti-steering,
 2-32 anti-tiering, gag, or most favored nation clause;
 2-33 (2) enter into a provider network contract that
 2-34 includes an anti-steering, anti-tiering, gag, or most favored
 2-35 nation clause; or
 2-36 (3) amend or renew an existing provider network
 2-37 contract previously entered into with a general contracting entity
 2-38 so that the contract as amended or renewed adds or retains an
 2-39 anti-steering, anti-tiering, gag, or most favored nation clause.
 2-40 (h) Any provision in a provider network contract that is an
 2-41 anti-steering, anti-tiering, gag, or most favored nation clause is
 2-42 void and unenforceable. The remaining provisions in the provider
 2-43 network contract remain in effect and are enforceable.
 2-44 (i) A health benefit plan issuer that encourages an enrollee
 2-45 to obtain a health care service from a particular provider,
 2-46 including offering incentives to encourage enrollees to use
 2-47 specific providers, or that introduces or modifies a tiered network
 2-48 plan or assigns providers into tiers has a fiduciary duty to the
 2-49 enrollee or policyholder to engage in that conduct only for the
 2-50 primary benefit of the enrollee or policyholder.
 2-51 SECTION 3. This Act takes effect immediately if it receives
 2-52 a vote of two-thirds of all the members elected to each house, as
 2-53 provided by Section 39, Article III, Texas Constitution. If this
 2-54 Act does not receive the vote necessary for immediate effect, this
 2-55 Act takes effect September 1, 2023.

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