

By: Goodman

H.B. No. 648

Substitute the following for H.B. No. 648:

By: Gallego

C.S.H.B. No. 648

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the use of certain standard physician contract forms;  
3 providing civil and administrative penalties.

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

5 SECTION 1. Subchapter E, Chapter 21, Insurance Code, is  
6 amended by adding Article 21.52P to read as follows:

7 Art. 21.52P. STANDARD CONTRACTS FOR PHYSICIAN SERVICES

8 Sec. 1. DEFINITIONS. In this article:

9 (1) "Person" means an individual, corporation,  
10 organization, government or governmental subdivision or agency,  
11 business trust, trust, partnership, association, and any other  
12 legal entity.

13 (2) "Physician" means a person licensed to practice  
14 medicine under Subtitle B, Title 3, Occupations Code.

15 Sec. 2. APPLICABILITY OF ARTICLE. This article applies to a  
16 person that contracts for or arranges for health care services  
17 provided by a physician to others.

18 Sec. 3. STANDARD PHYSICIAN CONTRACTS. (a) Except as  
19 provided by Subsection (c) of this section, the commissioner, in  
20 consultation with the contract advisory panel, shall adopt rules  
21 that:

22 (1) establish standard contract forms for use by a  
23 person in entering into contracts with physicians; and

24 (2) require that person to use those contracts.

1           (b) A contract form adopted under this section:

2                   (1) may not waive a provision of state or federal law,  
3 including a provision required by this article; and

4                   (2) must allow a dispute under the contract to be  
5 resolved:

6                           (A) through multiparty arbitration;

7                           (B) through an action brought by an affected  
8 physician in small claims court, up to the limits of the court's  
9 jurisdiction; or

10                           (C) through both actions authorized under  
11 Paragraphs (A) and (B) of this subdivision.

12           (c) A person described by Section 2 of this article or a  
13 physician may use a contract form other than a form required under  
14 Subsection (a) of this section that:

15                   (1) the physician asks to be used;

16                   (2) the physician and the person prepare with equal  
17 representation;

18                   (3) the physician and the person mutually agree may be  
19 used; and

20                   (4) would not cause a person described by Section 2 of  
21 this article to violate Section 5 of this article.

22           (d) The terms of a contract form adopted under Subsection  
23 (a) of this section and entered into by a physician and a person  
24 described by Section 2 of this article may not be subsequently  
25 modified unless the modification is agreed to by the physician and  
26 the person.

27           (e) A contract form adopted under Subsection (a) of this

1 section must:

2 (1) provide that the terms of the contract may not be  
3 tied to, modified by, or superseded by a providers' manual or other  
4 document that may be amended at the pleasure of the person;

5 (2) provide that any change in the contract must be  
6 disclosed to all parties; and

7 (3) identify all payors under the contract.

8 (f) A contract form subject to this article must require the  
9 use of a standardized explanation of payments, to be available both  
10 electronically and in writing. The electronic standardized  
11 explanation must comply with federal requirements relating to  
12 electronic dissemination of health care payment information or  
13 advice. The written standardized explanation must include:

14 (1) the patient account number;

15 (2) the type of health care service or product  
16 provided;

17 (3) the payment amount for the health care service or  
18 product provided, listed by:

19 (A) the code assigned to the health care service  
20 provided under the latest edition of "Current Procedural  
21 Terminology," as published by the American Medical Association; or

22 (B) detail line;

23 (4) the contract or network origin of any discount;

24 (5) the charges actually billed;

25 (6) the contracted rate;

26 (7) the amount paid for the health care service or  
27 product;

1           (8) the amount for which the patient is responsible;  
2 and  
3           (9) a description of any adjustment made under  
4 contract.

5           (g) A contract form subject to this article must require the  
6 adoption and use of standardized:

- 7           (1) patient referral forms; and  
8           (2) preauthorization or precertification forms.

9           Sec. 4. CONTRACT ADVISORY PANEL; MEMBERSHIP. (a) The  
10 contract advisory panel is established as an advisory panel to the  
11 commissioner to advise and make recommendations to the commissioner  
12 regarding the adoption of standard contract forms under Section 3  
13 of this article.

14           (b) The advisory panel is composed of nine members appointed  
15 jointly by the lieutenant governor and the speaker of the house of  
16 representatives as follows:

17           (1) two attorneys who primarily represent actively  
18 practicing physicians;

19           (2) two attorneys who primarily represent insurers,  
20 health maintenance organizations, or health benefit plans;

21           (3) one individual who serves as manager for  
22 independently practicing physicians;

23           (4) one physician actively engaged in the independent  
24 practice of medicine in this state;

25           (5) one individual who serves as medical director for  
26 an insurer, health maintenance organization, or health benefit  
27 plan;

1           (6) one individual who serves as a provider relations  
2 director or contract manager for an insurer, health maintenance  
3 organization, or health benefit plan; and

4           (7) one individual who represents consumers.

5           (c) The consumer representative on the advisory panel may  
6 not:

7           (1) receive any compensation from or be employed  
8 directly or indirectly by a physician, health care provider,  
9 insurer, health maintenance organization, or other health benefit  
10 plan issuer;

11           (2) be a health care provider; or

12           (3) be a person required to register as a lobbyist  
13 under Chapter 305, Government Code, because of the person's  
14 activities for compensation on behalf of a profession related to  
15 the operation of the advisory panel.

16           (d) Members of the advisory panel serve without  
17 compensation and at the will of the lieutenant governor and the  
18 speaker of the house of representatives.

19           (e) The advisory panel is not subject to Chapter 2110,  
20 Government Code.

21           Sec. 5. CERTAIN DISCRIMINATION PROHIBITED. A person  
22 described by Section 2 of this article may not:

23           (1) discriminate in any manner against a physician who  
24 uses a standard contract form adopted under this article, including  
25 through the redirection of patients to other physicians or health  
26 care providers;

27           (2) require or use reimbursement differentials or

1 financial incentives that penalize or place a physician at a  
2 disadvantage based in whole or in part on the use of a standard  
3 contract form adopted under this article; or

4 (3) require a physician to waive the use of a standard  
5 contract form adopted under this article.

6 Sec. 6. ADMINISTRATIVE PENALTY. (a) A person who violates  
7 this article or a rule adopted under this article is subject to an  
8 administrative penalty under Chapter 84 of this code for each  
9 violation.

10 (b) Each physician contract entered into in violation of  
11 this article constitutes a separate violation for purposes of this  
12 section.

13 Sec. 7. POWERS OF COMMISSIONER; ENFORCEMENT REMEDIES. (a)  
14 If the commissioner has reason to believe a person has violated this  
15 article or a rule adopted under this article, or that a person  
16 violating this article has engaged in or is threatening to engage in  
17 an unfair act in connection with conduct described by Section 5 of  
18 this article, the commissioner may:

19 (1) issue a cease and desist order under Section 8 of  
20 this article;

21 (2) request the attorney general to recover a civil  
22 penalty assessed under Subsection (c) of this section;

23 (3) seek injunctive relief under Subsection (d) of  
24 this section; or

25 (4) take any combination of the actions described by  
26 Subdivisions (1)-(3) of this subsection.

27 (b) If the commissioner has reason to believe that a person

1 is performing an act that violates this article or a rule adopted  
2 under this article, the commissioner may send a written request for  
3 information relating to that act. Any person who receives a written  
4 request under this subsection shall provide the requested  
5 information to the department not later than the 10th business day  
6 after the date the request is sent.

7 (c) A person who violates this article or a rule adopted  
8 under this article is subject to a civil penalty of not more than  
9 \$10,000 for each act of violation and for each day of violation.

10 (d) The commissioner may request that the attorney general  
11 bring an action in a district court in Travis County for injunctive  
12 relief to restrain a person from continuing a violation or threat of  
13 violation. On application for injunctive relief and a finding that  
14 a person is violating or threatening to violate this article or a  
15 rule adopted under this article, the district court shall grant the  
16 injunctive relief and issue an injunction without bond.

17 (e) On request by the commissioner, the attorney general  
18 shall institute and conduct a civil suit in the name of the state  
19 for injunctive relief, to recover a civil penalty, or for both  
20 injunctive relief and a civil penalty.

21 (f) If the commissioner has reason to believe that a person  
22 is performing an act that violates this article or a rule adopted  
23 under this article, the commissioner may conduct an examination of  
24 that person. Unless the person is another state agency or program,  
25 the person examined shall pay all expenses of the examination. The  
26 expenses must be in an amount certified to be just and reasonable by  
27 the commissioner.

1       (g) This section does not limit the department to the  
2 remedies specified by this article. Without regard to any prior  
3 proceedings under this article, the department and this state may  
4 elect to use at any time any remedy or action available at law.

5       Sec. 8. HEARING FOR CEASE AND DESIST ORDER. (a) The  
6 commissioner may set a hearing on whether to issue a cease and  
7 desist order under Section 7 of this article if the commissioner has  
8 reason to believe that a person:

9           (1) has violated or is threatening to violate this  
10 article or a rule adopted under this article; or

11           (2) acting in violation of this article or a rule  
12 adopted under this article has engaged in or is threatening to  
13 engage in an unfair act in connection with conduct described by  
14 Section 5 of this article.

15       (b) The commissioner shall serve on the person a statement  
16 of charges and a notice of hearing in the form provided by Section  
17 2001.052, Government Code, and the applicable rules of the  
18 commissioner.

19       (c) Except as agreed by the parties with prior written  
20 approval of the commissioner, a hearing under this section may be  
21 held not earlier than the 15th day after the date of service of the  
22 statement and notice required under Subsection (b) of this section.  
23 The hearing shall be conducted in the manner provided for a  
24 contested case under Chapter 2001, Government Code, and the  
25 commissioner's rules.

26       (d) After a hearing held under this section, the  
27 commissioner may issue against the person charged with a violation



1 an order that requires that the person immediately cease and desist  
2 from the violation.

3 Sec. 9. REFERRAL TO ATTORNEY GENERAL. The commissioner may  
4 refer the matter to the attorney general for enforcement if the  
5 commissioner has reason to believe that a person has:

6 (1) violated a cease and desist order issued under  
7 this article; or

8 (2) failed to pay a penalty assessed under this  
9 article.

10 Sec. 10. INFORMATIONAL FILING; FEE; ACCOUNT. (a) A person  
11 required under this article to use the standard contract for  
12 physician services shall file on an annual basis with the  
13 commissioner a statement of the number of individual contracts that  
14 have been executed.

15 (b) The department shall charge and receive a fee from a  
16 person described by Section 2 of this article, other than a  
17 government or a governmental subdivision or agency, for each  
18 contract executed. The commissioner shall set the fee in an amount  
19 reasonable and necessary to cover the costs of administering this  
20 article, not to exceed \$250 for each contract executed. Fees  
21 collected under this subsection shall be deposited to the credit of  
22 the standardized contract account in the general revenue fund, to  
23 be appropriated only to pay the department's costs incurred in  
24 enforcement of this article.

25 Sec. 11. OTHER REMEDIES. In addition to any other remedy  
26 available under this article, the attorney general may:

27 (1) bring an action, including an action for

1 injunctive relief, against a person for a violation of this article  
2 or a rule adopted under this article; and

3 (2) seek remedies available under Sections 17.58,  
4 17.60, 17.61, and 17.62, Business & Commerce Code.

5 SECTION 2. Sections 7 and 11, Article 21.52P, Insurance  
6 Code, as added by this Act, apply only to a cause of action that  
7 accrues on or after the effective date of this Act. A cause of  
8 action that accrues before that date is governed by the law as it  
9 existed immediately before the effective date of this Act, and that  
10 law is continued in effect for that purpose.

11 SECTION 3. Not later than June 1, 2004, the commissioner of  
12 insurance shall adopt the rules and forms required by Section 3,  
13 Article 21.52P, Insurance Code, as added by this Act.

14 SECTION 4. Unless an exception applies, a person described  
15 by Section 2, Article 21.52P, Insurance Code, as added by this Act,  
16 shall use a standard contract form adopted under Section 3 of that  
17 article for any contract between the person and a physician that is  
18 signed or renewed on or after January 1, 2005.

19 SECTION 5. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2003.