

By: Leibowitz, King of Taylor

H.B. No. 1392

Substitute the following for H.B. No. 1392:

By: Hopson

C.S.H.B. No. 1392

A BILL TO BE ENTITLED

AN ACT

relating to required procedures regarding the ranking of physicians
by health benefit plan issuers.

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

SECTION 1. Subtitle F, Title 8, Insurance Code, is amended
by adding Chapter 1460 to read as follows:

CHAPTER 1460. PHYSICIAN RANKING BY HEALTH BENEFIT PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1460.001. DEFINITIONS. In this chapter:

(1) "Hearing panel" means the physician panel
described by Section 1460.055(a).

(2) "Physician" means an individual licensed to
practice medicine in this state under Subtitle B, Title 3,
Occupations Code.

Sec. 1460.002. APPLICABILITY. This chapter applies to any
health benefit plan that:

(1) provides benefits for medical or surgical expenses
incurred as a result of a health condition, accident, or sickness,
including an individual, group, blanket, or franchise insurance
policy or insurance agreement, a group hospital service contract,
or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation
operating under Chapter 842;

1 (C) a fraternal benefit society operating under
2 Chapter 885;

3 (D) a stipulated premium company operating under
4 Chapter 884;

5 (E) a health maintenance organization operating
6 under Chapter 843;

7 (F) a multiple employer welfare arrangement that
8 holds a certificate of authority under Chapter 846;

9 (G) an approved nonprofit health corporation
10 that holds a certificate of authority under Chapter 844; or

11 (H) an entity not authorized under this code or
12 another insurance law of this state that contracts directly for
13 health care services on a risk-sharing basis, including a
14 capitation basis; or

15 (2) provides health and accident coverage through a
16 risk pool created under Chapter 172, Local Government Code,
17 notwithstanding Section 172.014, Local Government Code, or any
18 other law.

19 [Sections 1460.003-1460.050 reserved for expansion]

20 SUBCHAPTER B. RESTRICTIONS ON PHYSICIAN RANKING

21 Sec. 1460.051. PHYSICIAN RANKING. A health benefit plan
22 issuer, including a subsidiary or an affiliate of the health
23 benefit plan issuer, may not, in any manner, disseminate
24 information to the public that compares, rates, tiers, classifies,
25 measures, or ranks a physician's performance, efficiency, or
26 quality of practice against objective standards or the practice of
27 other physicians unless:

1 (1) the objective standards or comparison criteria
2 used by the health benefit plan issuer are disclosed to the
3 physician prior to the evaluation period;

4 (2) the data used to establish satisfaction of the
5 objective criteria or to make the comparison are available to the
6 physician for verification before any dissemination of information
7 to the public; and

8 (3) the health benefit plan issuer provides due
9 process to the physician as provided by this chapter.

10 Sec. 1460.052. DUE PROCESS; NOTICE OF INTENT. (a) Before a
11 health benefit plan issuer declines to invite a physician into a
12 preferred tier, classifies a physician into a particular tier, or
13 otherwise differentiates a physician from the physician's peers
14 based on performance, efficiency, or quality, the issuer must
15 notify the affected physician of its intent in a written notice
16 that meets the requirements of this section.

17 (b) A notice of intent issued under Subsection (a) must
18 include:

19 (1) a statement describing the proposed action of the
20 health benefit plan issuer and the reasons for that proposed
21 action;

22 (2) a statement that the affected physician has the
23 right to request a hearing on the proposed action as provided by
24 this chapter;

25 (3) any time limit within which the physician must
26 request a hearing under this chapter, which may not be less than 30
27 days from the date on which the notice of intent is issued; and

1 (4) a summary of the physician's rights under Section
2 1460.054.

3 Sec. 1460.053. NOTICE OF HEARING; HEARING BY
4 TELECONFERENCE. (a) If a hearing is requested by a physician who
5 receives a notice of intent under Section 1460.052, not later than
6 the 30th day after the date on which the physician requests the
7 hearing the physician must be given a written notice of the hearing
8 that includes:

9 (1) a statement of the place, time, and date of the
10 hearing, which must be conducted not less than 30 days after the
11 date the notice of the hearing is received by the physician; and

12 (2) a list of the witnesses, if any, expected to
13 testify at the hearing on behalf of the health benefit plan issuer.

14 (b) At the request of the affected physician and on
15 agreement by the health benefit plan issuer, the hearing may be held
16 by teleconference.

17 Sec. 1460.054. PHYSICIAN RIGHTS. A physician who requests
18 a hearing under this chapter has the following rights at the
19 hearing:

20 (1) the right to be represented by counsel;

21 (2) the right to have a record made of the proceedings
22 and to obtain a copy of the record for a reasonable charge;

23 (3) the right to call, examine, and cross-examine
24 witnesses;

25 (4) the right to present evidence;

26 (5) the right to submit a written statement to the
27 hearing panel at the close of the hearing; and

1 (6) the right to receive, following the hearing, the
2 written decision of the hearing panel, including a statement of the
3 basis for any recommendations by the panel.

4 Sec. 1460.055. HEARING PANEL; CONDUCT OF HEARING; EFFECT OF
5 DECISION. (a) A hearing requested under this chapter must be held
6 before a panel of three physicians, appointed by the health benefit
7 plan issuer, who practice the same medical specialty as the
8 affected physician or a similar medical specialty.

9 (b) The decision of the hearing panel is binding.

10 (c) If the hearing panel's decision is that the health
11 benefit plan issuer has correctly arrived at the comparison,
12 rating, ranking, tiering, or classification, the health benefit
13 plan issuer may make the publication.

14 (d) If the hearing panel's decision is that the health
15 benefit plan issuer has not correctly arrived at the comparison,
16 rating, ranking, tiering, or classification, the panel shall
17 instruct the health benefit plan issuer to modify the comparison,
18 rating, tier, classification, measurement, or ranking before
19 publication.

20 Sec. 1460.056. EFFECT OF NONAPPEARANCE; WAIVER. (a) The
21 hearing panel is not precluded from proceeding with a hearing
22 conducted under this chapter by the failure to appear at all or any
23 part of the hearing of:

24 (1) the affected physician or the physician's legal
25 counsel, if any; or

26 (2) any witness.

27 (b) Failure of a physician not represented by counsel or

1 failure of both a physician and the physician's counsel to appear
2 at the hearing is deemed a waiver of all procedural rights under
3 this chapter that could have been exercised by, or on behalf of, the
4 affected physician at the hearing.

5 Sec. 1460.057. RULES; STANDARDS. (a) The commissioner
6 shall adopt rules as necessary to implement this chapter.

7 (b) The commissioner by rule shall prescribe the standards
8 to be used by a health benefit plan issuer that uses a physician
9 ranking, classification, measuring, or tiering system. In adopting
10 standards, the commissioner shall consider the standards
11 prescribed by the National Quality Forum or the AQA Alliance.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2009.