By: Davis of Harris, et al. (Senate Sponsor-Duncan) H.B. No. 1888

(In the Senate - Received from the House April 20, 2009; May 1, 2009, read first time and referred to Committee on State Affairs; May 19, 2009, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; May 19, 2009, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 1888 By: Duncan

A BILL TO BE ENTITLED
AN ACT

relating to standards required for certain rankings of physicians by health benefit plans.

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. STANDARDS REQUIRED REGARDING CERTAIN PHYSICIAN RANKINGS BY HEALTH BENEFIT PLANS

Sec. 1460.001. DEFINITIONS. In this chapter:

(1) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state, including:

(A) an insurance company;

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

(C) a health maintenance organization operating under Chapter 843; and

(D) a stipulated premium company operating under Chapter 884.

(2) "Physician" means an individual licensed to practice medicine in this state or another state of the United States.

Sec. 1460.002. EXEMPTION. This chapter does not apply to:

(1) a Medicaid managed care program operated under Chapter 533, Government Code;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicare supplement benefit plan, as defined by Chapter 1652.

Sec. 1460.003. PHYSICIAN RANKING REQUIREMENTS. (a) A health benefit plan issuer, including a subsidiary or affiliate, may not rank physicians, classify physicians into tiers based on performance, or publish physician-specific information that includes rankings, tiers, ratings, or other comparisons of a physician's performance against standards, measures, or other physicians, unless:

(1) the standards used by the health benefit plan issuer conform to nationally recognized standards and guidelines as required by rules adopted under Section 1460.005;

(2) the standards and measurements to be used by the health benefit plan issuer are disclosed to each affected physician before any evaluation period used by the health benefit plan issuer; and

(3) each affected physician is afforded, before any publication or other public dissemination, an opportunity to dispute the ranking or classification through a process that, at a minimum, includes due process protections that conform to the following protections:

(A) the health benefit plan issuer provides at least 45 days written notice to the physician of the proposed rating, ranking, tiering, or comparison, including the

methodologies, data, and all other information utilized by the health benefit plan issuer in its rating, tiering, ranking or comparison decision;

(B) in addition to any written fair reconsideration process, the health benefit plan issuer, upon a request for review that is made within 30 days of receiving the notice under paragraph (A), provides a fair reconsideration proceeding, at the physician's option,:

(i)by teleconference, at an agreed upon time; or

(ii) in-person, at an agreed upon time or between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday;

(C) the physician has the right to provide information at a requested fair reconsideration proceeding for determination by a decision-maker, have a representative participate in the fair reconsideration proceeding, and submit a written statement at the conclusion of the fair reconsideration proceeding; and

(D) the health benefit plan issuer provides a written communication of the outcome of a fair reconsideration proceeding prior to any publication or dissemination of the rating, ranking, tiering, or comparison. The written communication must include the specific reasons for the final decision.

(b) This section does not apply to the publication of a list of network physicians and providers if ratings or comparisons are not made and the list is not a product of nor reflects the tiering or classification of physicians or providers.

Sec. 1460.004. DUTIES OF PHYSICIANS. A physician may not require or request that a patient of the physician enter into an agreement under which the patient agrees not to:

(1) rank or otherwise evaluate the physician;

(2) participate in surveys regarding the physician; or

(3) in any way comment on the patient's opinion of the physician.

Sec. 1460.005. RULES; STANDARDS. (a) The commissioner shall adopt rules ~~in the manner prescribed by Subchapter A, Chapter 36,~~ as necessary to implement this chapter.

(b) The commissioner shall adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described by Subsection (c).

(c) In adopting rules under this section, the commissioner shall consider the standards, guidelines and measures prescribed by nationally recognized organizations that establish or promote guidelines and performance measures emphasizing quality of health care, including the National Quality Forum and the AQA Alliance. If neither the National Quality Forum nor the AQA Alliance has established standards or guidelines regarding an issue, the commissioner shall consider the standards, guidelines, and measures prescribed by the National Committee on Quality Assurance and other similar national organizations. If the National Quality Forum, nor the AQA Alliance nor other national organizations have established standards or guidelines regarding an issue, the commissioner shall consider standards, guidelines and measures based on other bona-fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship.

Sec. 1460.006. DUTIES OF HEALTH BENEFIT PLAN ISSUER. A health benefit plan issuer shall ensure that:

(1) physicians currently in clinical practice are actively involved in the development of the standards used under this chapter; and

(2) the measures and methodology used in the comparison programs described by Section 1460.003 are transparent and valid.

Sec. 1460.007. SANCTIONS; DISCIPLINARY ACTIONS. (a) A health benefit plan issuer that violates this chapter or a rule adopted under this chapter is subject to sanctions and disciplinary actions under Chapters 82 and 84.

(b) A violation of this chapter by a physician constitutes grounds for disciplinary action by the Texas Medical Board, including imposition of an administrative penalty.

SECTION 2. (a) A health benefit plan issuer shall comply with Chapter 1460, Insurance Code, as added by this Act, not later than December 31, 2009.

(b) A health benefit plan issuer is not subject to sanctions or disciplinary actions under Section 1460.007, Insurance Code, as added by this Act, before January 1, 2010.

(c) A physician is not subject to sanctions or disciplinary actions under Section 1460.007, Insurance Code, as added by this Act, before January 1, 2010.

SECTION 3. This Act takes effect September 1, 2009.

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