

By: Deuell

S.B. No. 1396

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 1460.056(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. INJUNCTIVE RELIEF. (a) A writ of injunction  
11 may be granted by any district court if a health benefit plan issuer  
12 disseminates, or intends to disseminate, information that  
13 compares, rates, tiers, classifies, measures, or ranks physician  
14 performance, efficiency, or quality without meeting the criteria  
15 required under Section 1460.051.

16           (b) An action under Subsection (a) may be brought by any  
17 affected physician or on the behalf of affected physicians.

18           (c) Subchapter B, Chapter 26, Civil Practice and Remedies  
19 Code, does not apply to an action brought under this chapter.

20           Sec. 1460.053. DUE PROCESS; NOTICE OF INTENT. (a) Before a  
21 health benefit plan issuer declines to invite a physician into a  
22 preferred tier, classifies a physician into a particular tier, or  
23 otherwise differentiates a physician from the physician's peers  
24 based on performance, efficiency, or quality, the issuer must  
25 notify the affected physician of its intent in a written notice  
26 that meets the requirements of this section.

27           (b) A notice of intent issued under Subsection (a) must

1 include:

2 (1) a statement describing the proposed action of the  
3 health benefit plan issuer and the reasons for that proposed  
4 action;

5 (2) a statement that the affected physician has the  
6 right to request a hearing on the proposed action as provided by  
7 this chapter;

8 (3) any time limit within which the physician must  
9 request a hearing under this chapter, which may not be less than 60  
10 days from the date on which the notice of intent is issued; and

11 (4) a summary of the physician's rights under Section  
12 1460.055.

13 Sec. 1460.054. NOTICE OF HEARING. If a hearing is requested  
14 by a physician who receives a notice of intent under Section  
15 1460.053, not later than the 30th day after the date on which the  
16 physician requests the hearing the physician must be given a  
17 written notice of the hearing that includes:

18 (1) a statement of the place, time, and date of the  
19 hearing, which must be conducted:

20 (A) not less than 60 days after the date the  
21 notice of the hearing is received by the physician; and

22 (B) not more than 90 days after the date the  
23 notice of the hearing is received by the physician; and

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

26 Sec. 1460.055. PHYSICIAN RIGHTS. A physician who requests  
27 a hearing under this chapter has the following rights at the

1 hearing:

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

3 (2) the right to have a record made of the proceedings

4 and to obtain a copy of the record for a reasonable charge;

5 (3) the right to call, examine, and cross-examine

6 witnesses;

7 (4) the right to present evidence;

8 (5) the right to submit a written statement to the

9 hearing panel at the close of the hearing; and

10 (6) the right to receive, following the hearing, the

11 written decision of the hearing panel, including a statement of the

12 basis for any recommendations by the panel.

13 Sec. 1460.056. HEARING PANEL; CONDUCT OF HEARING. (a) A

14 hearing requested under Section 1460.054 must be held before a

15 panel of three physicians who practice the same medical specialty

16 as the affected physician or a similar medical specialty.

17 (b) The order of presentation in the hearing shall be as

18 follows:

19 (1) opening statements by the health benefit plan

20 issuer followed by the physician or the physician's counsel;

21 (2) presentation of the case by the health benefit

22 plan issuer followed by presentation of the case by the physician or

23 the physician's counsel;

24 (3) rebuttal by the health benefit plan issuer

25 followed by the physician or the physician's counsel; and

26 (4) closing statements by the health benefit plan

27 issuer followed by the physician or the physician's counsel.

1       Sec. 1460.057. EFFECT OF NONAPPEARANCE; WAIVER. (a) The  
2 hearing panel is not precluded from proceeding with a hearing  
3 conducted under this chapter by the failure to appear at all or any  
4 part of the hearing of:

5           (1) the affected physician or the physician's legal  
6 counsel, if any; or

7           (2) any witness.

8       (b) Failure of a physician not represented by counsel or  
9 failure of both a physician and the physician's counsel to appear  
10 at the hearing is deemed a waiver of all procedural rights under  
11 this chapter that could have been exercised by, or on behalf of, the  
12 affected physician at the hearing.

13       Sec. 1460.058. EXAMINATION OF WITNESSES. Each of the  
14 following persons present at a hearing conducted under this chapter  
15 may examine or cross-examine any witness testifying at the hearing  
16 in person, telephonically, or electronically through the Internet  
17 or otherwise:

18           (1) the physician or, at the physician's option, the  
19 physician's counsel, but not both;

20           (2) the representative of the health benefit plan  
21 issuer, as designated by the issuer; and

22           (3) the members of the hearing panel.

23       Sec. 1460.059. BURDEN OF PROOF; DECISION. (a) The health  
24 benefit plan issuer must prove, by a preponderance of evidence,  
25 that:

26           (1) in the case of a methodology using objective  
27 standards, the affected physician's performance, efficiency, or

1 quality and the effectiveness of the medical care delivered by the  
2 physician has not met the standards disclosed under Section  
3 1460.051; or

4 (2) in the case of a methodology using relative  
5 comparison criteria, the data is accurate and correctly portrays  
6 the affected physician's performance, efficiency, or quality  
7 relative to other physicians in the same or similar medical  
8 specialty with comparable patient populations.

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 met its burden of proof, the health benefit  
12 plan issuer may publish the comparison, rating, tier,  
13 classification, measurement, or ranking.

14 (d) If the hearing panel's decision is that the health  
15 benefit plan issuer has not met its burden of proof, the panel shall  
16 instruct the health benefit plan issuer to appropriately modify the  
17 comparison, rating, tier, classification, measurement, or ranking  
18 before publication.

19 Sec. 1460.060. EFFECT OF CONTINUED DISAGREEMENT. (a) On  
20 written notice that the affected physician disagrees with the  
21 health benefit plan issuer's comparison, rating, tier,  
22 classification, measurement, or ranking or the decision of the  
23 hearing panel, the health benefit plan issuer shall prominently  
24 display a symbol indicating the physician disputes the comparison,  
25 rating, tier, classification, measurement, or ranking next to any  
26 comparison, rating, tier, classification, measurement, or ranking  
27 information for that physician.

1        (b) Each Internet web page displaying comparison, rating,  
2 tier, classification, measurement, or ranking information must  
3 contain a key explaining the meaning of the symbol required by  
4 Subsection (a).

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