

SENATE AMENDMENTS

2nd Printing

By: Davis of Harris, Coleman, Isett, Shelton,
Branch

H.B. No. 1888

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

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

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

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

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

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

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

24 (3) each affected physician is afforded, before any
25 publication or other public dissemination, an opportunity to
26 dispute the ranking or classification through a process that
27 includes due process protections that conform to protections

1 described by 42 U.S.C. Section 11112.

2 (b) This section does not apply to the publication of a list
3 of network physicians and providers if ratings or comparisons are
4 not made.

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

8 (1) rank or otherwise evaluate the physician;

9 (2) participate in surveys regarding the physician; or

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

12 Sec. 1460.005. RULES; STANDARDS. (a) The commissioner
13 shall adopt rules in the manner prescribed by Subchapter A, Chapter
14 36, as necessary to implement this chapter.

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

19 (c) In adopting rules under this section, the commissioner
20 shall consider the standards and guidelines prescribed by
21 nationally recognized organizations that establish or promote
22 guidelines and performance measures emphasizing quality of health
23 care, including the National Quality Forum and the AQA Alliance. If
24 neither the National Quality Forum nor the AQA Alliance has
25 established standards or guidelines regarding an issue, the
26 commissioner shall consider the standards and guidelines
27 prescribed by the National Committee on Quality Assurance and other

1 similar national organizations.

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

4 (1) physicians being measured are actively involved in
5 the development of the standards used under this chapter; and

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

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

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

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

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

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

ADOPTED

MAY 21 2009

Patry Spaw
Secretary of the Senate

By: Duncan

HB.B. No. 1888

Substitute the following for H.B. No. 1888:

By: [Signature]

C.S. HB.B. No. 1888

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

1 Chapter 884.

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

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

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

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

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

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

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

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

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

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

10 (A) the health benefit plan issuer provides at
11 least 45 days written notice to the physician of the proposed
12 rating, ranking, tiering, or comparison, including the
13 methodologies, data, and all other information utilized by the
14 health benefit plan issuer in its rating, tiering, ranking or
15 comparison decision;

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

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

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

1 Friday;

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

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

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

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

22 (1) rank or otherwise evaluate the physician;

23 (2) participate in surveys regarding the physician;

24 or

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

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

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

10 (c) In adopting rules under this section, the commissioner
11 shall consider the standards, guidelines and measures prescribed
12 by nationally recognized organizations that establish or promote
13 guidelines and performance measures emphasizing quality of
14 health care, including the National Quality Forum and the AQA
15 Alliance. If neither the National Quality Forum nor the AQA
16 Alliance has established standards or guidelines regarding an
17 issue, the commissioner shall consider the standards,
18 guidelines, and measures prescribed by the National Committee on
19 Quality Assurance and other similar national organizations. If
20 the National Quality Forum, nor the AQA Alliance nor other
21 nationally recognized organizations have established standards or guidelines
22 regarding an issue, the commissioner shall consider standards,
23 guidelines and measures based on other bona-fide nationally
24 recognized guidelines, expert-based physician consensus quality

1 standards, or leading objective clinical evidence and
2 scholarship.

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

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

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

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

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

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

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

24 (c) A physician is not subject to sanctions or disciplinary

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1 actions under Section 1460.007, Insurance Code, as added by this
2 Act, before January 1, 2010.

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

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ADOPTED

FLOOR AMENDMENT NO. 1

MAY 21 2009:

Atay Spaul
Secretary of the Senate

1 Amend C.S.H.B. 1888 as follows:
2 On page 2, delete lines 35 - 37 and replace with the
3 following:
4 "Sec. 1460.005. RULES; STANDARDS. (a) The commissioner
5 shall adopt rules as necessary to implement this chapter."

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1888 by Davis, John (Relating to standards required for certain rankings of physicians by health benefit plans.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would implement a recommendation in the Legislative Budget Board (LBB) *Government Effectiveness and Efficiency Report* entitled, "Require Health Plans That Rank Physicians To Meet National Standards."

The bill would require that health benefit plans which rank physicians to meet standards as prescribed by rule by the Commissioner of Insurance. The bill would require that the Commissioner of Insurance adopt rules as necessary to implement this chapter.

The bill would require that a health benefit plan that ranks physicians must use the nationally recognized standards and guidelines required by rule, disclose the standards and measurements by which each physician is ranked to the physician, and provide affected physicians with due process for the physician to dispute the ranking. The bill provides for sanctions or disciplinary actions against health benefit plans or physicians if they violate the provisions of the bill.

It is not anticipated that these requirements would have any significant fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, SD, KJG, JI, HC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1888** by Davis, John (Relating to standards required for certain rankings of physicians by health benefit plans.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would implement a recommendation in the Legislative Budget Board (LBB) *Government Effectiveness and Efficiency Report* entitled, "Require Health Plans That Rank Physicians To Meet National Standards."

The bill would require that health benefit plans which rank physicians to meet standards as prescribed by rule by the Commissioner of Insurance. The bill would require that the Commissioner of Insurance consider national standards and performance measures emphasizing quality of health care in adopting the required rules.

The bill would require that a health benefit plan that ranks physicians must use the nationally recognized standards and guidelines required by rule, disclose the standards and measurements by which each physician is ranked to the physician, and provide affected physicians with due process for the physician to dispute the ranking. The bill provides for sanctions or disciplinary actions against health benefit plans or physicians if they violate the provisions of the bill.

It is not anticipated that these requirements would have any significant fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, JI, HC

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 8, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1888 by Davis, John (Relating to standards required for certain rankings of physicians by health benefit plans.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would implement a recommendation in the Legislative Budget Board (LBB) *Government Effectiveness and Efficiency Report* entitled, "Require Health Plans That Rank Physicians To Meet National Standards."

The bill would require that health benefit plans which rank physicians to meet standards as prescribed by rule by the Commissioner of Insurance. The bill would require that the Commissioner of Insurance consider national standards and performance measures emphasizing quality of health care in adopting the required rules.

The bill would require that a health benefit plan that ranks physicians must use the nationally recognized standards and guidelines required by rule, disclose the standards and measurements by which each physician is ranked to the physician, and provide affected physicians with due process for the physician to dispute the ranking. The bill provides for sanctions or disciplinary actions against health benefit plans or physicians if they violate the provisions of the bill.

It is not anticipated that these requirements would have any significant fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, JI, HC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1888** by Davis, John (Relating to standards required for certain rankings of physicians by health benefit plans.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would provide that health benefit plans which rank physicians must meet standards as prescribed by the Commissioner of Insurance by rule. The bill would require that the Commissioner of Insurance consider national standards and performance measures emphasizing quality of health care. The bill would require that a health benefit plan that ranks physicians must disclose the standards and measurements by which each physician is ranked to the physician. The bill would provide due process for the physician to dispute the ranking.

It is not anticipated that these requirements would have any fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, JI, HC