BILL ANALYSIS

Senate Research Center
82R10263 TJS-F

H.B. 3017
By: Smithee (Duncan)
State Affairs
5/14/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some insurance products contain discretionary clauses that require courts to give discretion to an insurer's interpretation of policy terms and coverage determinations under the policy. While the health insurance contract may list the benefits payable, the discretionary clause makes those payments contingent on the insurer's discretion.

Discretionary clauses instruct reviewing courts to presume the insurer's decision is correct, which interested parties argue makes them nearly impossible to overturn. The parties contend that these clauses may cause an insured person to lose a court challenge even if the evidence favors the insured and that the clauses create an inherent conflict of interest, as the insurer responsible for providing benefits also has discretionary authority to decide what benefits are due.

Several states currently prohibit the use of these clauses, and the Texas commissioner of insurance recently adopted rules prohibiting the use of discretionary clauses in certain insurance forms.

H.B. 3017 amends current law relating to the prohibited use of discretionary clauses in certain health maintenance organization and insurance contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 1271, Insurance Code, by adding Section 1271.057, as follows:

Sec. 1271.057. DISCRETIONARY CLAUSES PROHIBITED. (a) Prohibits an evidence of coverage from containing a discretionary clause provision.

(b) Provides that a discretionary clause provision includes a provision that:

(1) purports or acts to bind the enrollee to, or grant deference in subsequent proceedings to, adverse eligibility or benefit decisions or interpretations of the evidence of coverage by the health maintenance organization (HMO); or

(2) specifies:

(A) that an enrollee or other claimant may not contest or appeal a denial of a benefit;

(B) that the HMO's interpretation of the terms of an evidence of coverage or other form or its decision to deny coverage or the amount of benefits is binding on an enrollee or other claimant;

(C) that in an appeal, the HMO's decision-making power as to the interpretation of the terms of an evidence of coverage or other form, or as to coverage, is binding; or

(D) a standard of review in any appeal process that gives deference to the original benefit decision or provides standards of interpretation or review that are inconsistent with the laws of this state, including the common law.

SECTION 2. Amends Subchapter B, Chapter 1701, Insurance Code, by adding Section 1701.062, as follows:

Sec. 1701.062. DISCRETIONARY CLAUSES PROHIBITED. (a) Prohibits an insurer from using a document described by Section 1701.002 (Applicability of Chapter to Forms of Certain Documents) in this state if the document contains a discretionary clause.

(b) Provides that a discretionary clause includes a provision that:

(1) purports or acts to bind the claimant to, or grant deference in subsequent proceedings to, adverse eligibility or claim decisions or policy interpretations by the insurer; or

(2) specifies:

(A) that a policyholder or other claimant may not contest or appeal a denial of a claim;

(B) that the insurer's interpretation of the terms of a document or decision to deny coverage or the amount of benefits is binding upon a policyholder or other claimant;

(C) that in an appeal, the insurer's decision about or interpretation of the terms of a document or coverage is binding; or

(D) a standard of review in any appeal process that gives deference to the original claim decision or provides standards of interpretation or review that are inconsistent with the laws of this state, including the common law.

SECTION 3. Makes application of this Act prospective to January 1, 2012.

SECTION 4. Effective date: upon passage or September 1, 2011.