BILL ANALYSIS

H.B. 3017
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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 seeks to establish statutory prohibitions on the use of discretionary clauses in certain health maintenance organization and insurance contracts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3017 amends the Insurance Code to prohibit an evidence of coverage of benefits provided by a health maintenance organization from containing a discretionary clause provision. The bill specifies that a discretionary clause provision includes a provision that:

- 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; or
- specifies that an enrollee or other claimant may not contest or appeal a denial of a benefit; that the health maintenance organization'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; that in an appeal, the health maintenance organization'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 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 Texas laws, including common law.

H.B. 3017 prohibits an insurer from using certain life and health coverage policy documents in Texas if the document contains a discretionary clause. The bill specifies that a discretionary

clause includes a provision that:

- 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
- specifies that a policyholder or other claimant may not contest or appeal a denial of a claim; 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; that in an appeal, the insurer's decision about or interpretation of the terms of a document or coverage is binding; or 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 Texas laws, including common law.

H.B. 3017 makes the bill's provisions applicable to a document or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 2012.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.