By: Taylor of Galveston H.B. No. 1772

Substitute the following for H.B. No. 1772:

By: Taylor of Galveston C.S.H.B. No. 1772

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain benefit plans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1273.001(4), Insurance Code, is amended to read as follows:

(4) "Point-of-service plan" means an arrangement under which:

(A) an enrollee chooses to obtain benefits or services through:

(i) a health maintenance organization delivery network, including a limited provider network; or

(ii) a non-network delivery system outside the health maintenance organization delivery network, including an exclusive provider benefit plan under Chapter 1301 or a limited provider network, that is administered under an indemnity benefit arrangement for the cost of health care services; or

(B) indemnity benefits for the cost of health care services are provided by an insurer or group hospital service corporation in conjunction with network benefits arranged or provided by a health maintenance organization.

SECTION 2. Section 1301.001, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Exclusive provider benefit plan" means a benefit

plan in which an insurer excludes benefits to an insured for some or all services, other than emergency care services required under Section 1301.155, provided by a physician or health care provider who is not a preferred provider.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term does not include a physician.

SECTION 3. Section 1301.003, Insurance Code, is amended to read as follows:

Sec. 1301.003. PREFERRED PROVIDER BENEFIT PLANS AND EXCLUSIVE PROVIDER BENEFIT PLANS PERMITTED. A preferred provider benefit plan or an exclusive provider benefit plan [~~health insurance policy that provides different benefits from the basic level of coverage for the use of preferred providers and~~] that meets the requirements of this chapter is not:

(1) unjust under Chapter 1701;

(2) unfair discrimination under Subchapter A or B, Chapter 544; or

(3) a violation of Subchapter B or C, Chapter 1451.

SECTION 4. Section 1301.0041, Insurance Code, is amended to read as follows:

Sec. 1301.0041. APPLICABILITY. (a) Except as otherwise specifically provided by this chapter, this [~~This~~] chapter applies to each [~~any~~] preferred provider benefit plan in which an insurer provides, through the insurer's health insurance policy, for the

payment of a level of coverage that is different depending on whether an [~~from the basic level of coverage provided by the health insurance policy if the~~] insured uses a preferred provider or a nonpreferred provider.

(b) Unless otherwise specified, an exclusive provider benefit plan is subject to this chapter in the same manner as a preferred provider benefit plan.

(c) This chapter does not apply to:

(1) the child health plan program under Chapter 62, Health and Safety Code; or

(2) a Medicaid managed care program under Chapter 533, Government Code.

SECTION 5. Subchapter A, Chapter 1301, Insurance Code, is amended by adding Section 1301.0042 to read follows:

Sec. 1301.0042. APPLICABILITY OF INSURANCE LAW. A provision of this code or another insurance law of this state that applies to a preferred provider benefit plan applies to an exclusive provider benefit plan to the extent that the commissioner determines the provision to be consistent with the function and purpose of an exclusive provider benefit plan.

SECTION 6. Section 1301.0045, Insurance Code, is amended to read as follows:

Sec. 1301.0045. CONSTRUCTION OF CHAPTER. (a) Except as provided by Section 1301.0046, this chapter may not be construed to limit the level of reimbursement or the level of coverage, including deductibles, copayments, coinsurance, or other cost-sharing provisions, that are applicable to preferred

providers or, for plans other than exclusive provider benefit plans, nonpreferred providers.

(b) Except as provided by Section 1301.155, this chapter may not be construed to require an exclusive provider benefit plan to compensate a nonpreferred provider for services provided to an insured.

SECTION 7. Section 1301.0046, Insurance Code, is amended to read as follows:

Sec. 1301.0046. COINSURANCE REQUIREMENTS FOR SERVICES OF NONPREFERRED PROVIDERS. The insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. This section does not apply to an exclusive provider benefit plan.

SECTION 8. Sections 1301.005(a) and (b), Insurance Code, are amended to read as follows:

(a) An insurer offering a preferred provider benefit plan shall ensure that both preferred provider benefits and basic level benefits are reasonably available to all insureds within a designated service area. This subsection does not apply to an exclusive provider benefit plan.

(b) If services are not available through a preferred provider within a designated [~~the~~] service area under a preferred provider benefit plan or an exclusive provider benefit plan, an insurer shall reimburse a physician or health care provider who is not a preferred provider at the same percentage level of reimbursement as a preferred provider would have been reimbursed

had the insured been treated by a preferred provider.

SECTION 9. Subchapter A, Chapter 1301, Insurance Code, is amended by adding Section 1301.0051 to read as follows:

Sec. 1301.0051. EXCLUSIVE PROVIDER BENEFIT PLANS: QUALITY IMPROVEMENT AND UTILIZATION MANAGEMENT. (a) An insurer that offers an exclusive provider benefit plan shall establish procedures to ensure that health care services are provided to insureds under reasonable standards of quality of care that are consistent with prevailing professionally recognized standards of care or practice. The procedures must include:

(1) mechanisms to ensure availability, accessibility, quality, and continuity of care;

(2) subject to Section 1301.059, a continuing quality improvement program to monitor and evaluate services provided under the plan, including primary and specialist physician services and ancillary and preventive health care services, provided in institutional or noninstitutional settings;

(3) a method of recording formal proceedings of quality improvement program activities and maintaining quality improvement program documentation in a confidential manner;

(4) subject to Section 1301.059, a physician review panel to assist the insurer in reviewing medical guidelines or criteria;

(5) a patient record system that facilitates documentation and retrieval of clinical information for the insurer's evaluation of continuity and coordination of services and assessment of the quality of services provided to insureds under

the plan;

(6) a mechanism for making available to the commissioner the clinical records of insureds for examination and review by the commissioner on request of the commissioner; and

(7) a specific procedure for the periodic reporting of quality improvement program activities to:

(A) the governing body and appropriate staff of the insurer; and

(B) physicians and health care providers that provide health care services under the plan.

(b) Minutes of a formal proceeding of the quality improvement program established under Subsection (a) shall be made available to the commissioner on request of the commissioner.

(c) Insured records made available to the commissioner under Subsection (a)(6) are confidential and privileged, and are not subject to Chapter 552, Government Code, or to subpoena, except to the extent necessary for the commissioner to enforce this chapter.

SECTION 10. Subchapter D, Chapter 1301, Insurance Code, is amended by adding Section 1301.1581 to read as follows:

Sec. 1301.1581. INFORMATION CONCERNING EXCLUSIVE PROVIDER BENEFIT PLANS. (a) In this section, "prospective insured" has the meaning assigned by Section 1301.158.

(b) In addition to the information required to be provided under Section 1301.158, an insurer that offers an exclusive provider benefit plan shall provide to a current or prospective group contract holder or current or prospective insured notice that

the benefit plan includes limited coverage for services provided by a physician or health care provider that is not a preferred provider.

SECTION 11. The change in law made by this Act applies only to an exclusive provider benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2012. An exclusive provider benefit plan that is delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12. This Act takes effect September 1, 2011.