

AN ACT

relating to the prohibited use of discretionary clauses in certain health maintenance organization and insurance contracts.

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

SECTION 1. Subchapter B, Chapter 1271, Insurance Code, is amended by adding Section 1271.057 to read as follows:

Sec. 1271.057. DISCRETIONARY CLAUSES PROHIBITED. (a) An evidence of coverage may not contain a discretionary clause provision.

(b) 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; or

(2) specifies:

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

(B) 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;

(C) that in an appeal, the health maintenance organization's decision-making power as to the interpretation of

1 the terms of an evidence of coverage or other form, or as to
2 coverage, is binding; or

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

7 SECTION 2. Subchapter B, Chapter 1701, Insurance Code, is
8 amended by adding Section 1701.062 to read as follows:

9 Sec. 1701.062. DISCRETIONARY CLAUSES PROHIBITED. (a) An
10 insurer may not use a document described by Section 1701.002 in this
11 state if the document contains a discretionary clause.

12 (b) A discretionary clause includes a provision that:

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

16 (2) specifies:

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

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

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

25 (D) a standard of review in any appeal process
26 that gives deference to the original claim decision or provides
27 standards of interpretation or review that are inconsistent with

1 the laws of this state, including the common law.

2 SECTION 3. The change in law made by this Act applies only
3 to a document or evidence of coverage that is delivered, issued for
4 delivery, or renewed on or after January 1, 2012. A document or
5 evidence of coverage that is delivered, issued for delivery, or
6 renewed before January 1, 2012, is governed by the law in effect
7 immediately before the effective date of this Act, and that law is
8 continued in effect for that purpose.

9 SECTION 4. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 3017 was passed by the House on May 10, 2011, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3017 was passed by the Senate on May 24, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor