

1-1 By: Smithee (Senate Sponsor - Duncan) H.B. No. 3017  
1-2 (In the Senate - Received from the House May 11, 2011;  
1-3 May 11, 2011, read first time and referred to Committee on State  
1-4 Affairs; May 17, 2011, reported favorably by the following vote:  
1-5 Yeas 9, Nays 0; May 17, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the prohibited use of discretionary clauses in certain  
1-9 health maintenance organization and insurance contracts.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter B, Chapter 1271, Insurance Code, is  
1-12 amended by adding Section 1271.057 to read as follows:

1-13 Sec. 1271.057. DISCRETIONARY CLAUSES PROHIBITED. (a) An  
1-14 evidence of coverage may not contain a discretionary clause  
1-15 provision.

1-16 (b) A discretionary clause provision includes a provision  
1-17 that:

1-18 (1) purports or acts to bind the enrollee to, or grant  
1-19 deference in subsequent proceedings to, adverse eligibility or  
1-20 benefit decisions or interpretations of the evidence of coverage by  
1-21 the health maintenance organization; or

1-22 (2) specifies:

1-23 (A) that an enrollee or other claimant may not  
1-24 contest or appeal a denial of a benefit;

1-25 (B) that the health maintenance organization's  
1-26 interpretation of the terms of an evidence of coverage or other form  
1-27 or its decision to deny coverage or the amount of benefits is  
1-28 binding on an enrollee or other claimant;

1-29 (C) that in an appeal, the health maintenance  
1-30 organization's decision-making power as to the interpretation of  
1-31 the terms of an evidence of coverage or other form, or as to  
1-32 coverage, is binding; or

1-33 (D) a standard of review in any appeal process  
1-34 that gives deference to the original benefit decision or provides  
1-35 standards of interpretation or review that are inconsistent with  
1-36 the laws of this state, including the common law.

1-37 SECTION 2. Subchapter B, Chapter 1701, Insurance Code, is  
1-38 amended by adding Section 1701.062 to read as follows:

1-39 Sec. 1701.062. DISCRETIONARY CLAUSES PROHIBITED. (a) An  
1-40 insurer may not use a document described by Section 1701.002 in this  
1-41 state if the document contains a discretionary clause.

1-42 (b) A discretionary clause includes a provision that:

1-43 (1) purports or acts to bind the claimant to, or grant  
1-44 deference in subsequent proceedings to, adverse eligibility or  
1-45 claim decisions or policy interpretations by the insurer; or

1-46 (2) specifies:

1-47 (A) that a policyholder or other claimant may not  
1-48 contest or appeal a denial of a claim;

1-49 (B) that the insurer's interpretation of the  
1-50 terms of a document or decision to deny coverage or the amount of  
1-51 benefits is binding upon a policyholder or other claimant;

1-52 (C) that in an appeal, the insurer's decision  
1-53 about or interpretation of the terms of a document or coverage is  
1-54 binding; or

1-55 (D) a standard of review in any appeal process  
1-56 that gives deference to the original claim decision or provides  
1-57 standards of interpretation or review that are inconsistent with  
1-58 the laws of this state, including the common law.

1-59 SECTION 3. The change in law made by this Act applies only  
1-60 to a document or evidence of coverage that is delivered, issued for  
1-61 delivery, or renewed on or after January 1, 2012. A document or  
1-62 evidence of coverage that is delivered, issued for delivery, or  
1-63 renewed before January 1, 2012, is governed by the law in effect  
1-64 immediately before the effective date of this Act, and that law is

2-1 continued in effect for that purpose.

2-2 SECTION 4. This Act takes effect immediately if it receives  
2-3 a vote of two-thirds of all the members elected to each house, as  
2-4 provided by Section 39, Article III, Texas Constitution. If this  
2-5 Act does not receive the vote necessary for immediate effect, this  
2-6 Act takes effect September 1, 2011.

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