BILL ANALYSIS

C.S.H.B. 317
By: Raymond
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that certain managed care plan issuers are using laboratory benefits managers that require health care providers to use clinical decision support software and laboratory benefits management programs to obtain preauthorization before ordering clinical lab tests. There are concerns regarding the supervision of the use of such software and programs by professionals who may not practice in the same or a similar specialty as the ordering physician or health care provider and concerns regarding the accompanying data input requirements burdening the health care providers. C.S.H.B. 317 seeks to address these issues by, among other things, setting out certain prohibitions and limitations on the use of clinical decision support software and laboratory benefits management programs in connection with the provision of clinical laboratory services to certain managed care plan enrollees.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 317 amends the Insurance Code to set out provisions, with respect to clinical laboratory services, that are applicable to a person with whom a managed care plan issuer contracts to manage or administer benefits for clinical laboratory services, process or pay claims, obtain the services of physicians or other health care providers to provide health care services to enrollees, or issue verifications or prior authorizations.

C.S.H.B. 317 defines, among other terms, "managed care plan" to mean a health benefit plan under which health care services are provided to enrollees through contracts with physicians or health care providers and that requires enrollees to use participating providers or that provides a different level of coverage for enrollees who use participating providers. The term includes a health benefit plan issued by a health maintenance organization, a preferred or exclusive provider benefit plan issuer, or any other entity that issues a health benefit plan described by the bill, including an insurance company.

C.S.H.B. 317 prohibits a managed care plan issuer from:

- requiring the use of clinical decision support software or a laboratory benefits management program by an enrollee's physician or health care provider before, at the time, or after the physician or provider orders a clinical laboratory service for the enrollee, unless the specimen is not obtained in a hospital or ambulatory surgical center

and the order is for esoteric molecular and genomic testing or there are national medical consensus guidelines available for the service ordered;

- directing or limiting the decision making of an enrollee's physician or health care provider relating to the referral of a patient specimen to a laboratory in the managed care plan network or a network otherwise designated by the managed care plan issuer;
- limiting, reducing, or denying payment for a clinical laboratory service based on whether the ordering physician or health care provider uses clinical decision support software or a laboratory benefits management program;
- routinely requiring a second opinion of a pathologist's finding from another pathologist unless the second opinion is medically warranted based on the specific clinical presentation of the enrollee or other clinical factors relevant to the enrollee; and
- using a laboratory benefits management program that is administered, created, or owned by an individual or entity with an interest in a clinical laboratory in the managed care plan network.

C.S.H.B. 317 authorizes a managed care plan issuer to only use clinical decision support software or a laboratory benefits management program that:

- is transparently based on published, peer-reviewed medical literature;
- is subject to timely and routine updates based on national medical consensus guidelines and the most current medical knowledge; and
- may be immediately overridden by a physician based on the physician's medical judgment.

C.S.H.B. 317 authorizes a managed care plan issuer to only use clinical decision support software, a laboratory benefits management program, or a prior authorization protocol for clinical laboratory services that is supervised by a physician of the same or a similar specialty as the ordering physician or health care provider.

C.S.H.B. 317 prohibits its provisions from being construed to regulate the implementation or administration of clinical decision support software, a laboratory benefits management program, or a prior authorization protocol by an entity, including a health care entity, that is not acting on behalf of or at the direction of a managed care plan issuer in adopting the software, program, or protocol.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 317 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the following:

- a prohibition against a managed care plan issuer contracting or otherwise requiring, steering, encouraging, or otherwise directing an enrollee's physician or health care provider to refer a patient specimen to a particular clinical laboratory in the managed care plan's provider network designated by the managed care plan issuer other than the clinical laboratory in the network selected by the physician or health care provider;
- a provision explicitly establishing that nothing in the bill prohibits a managed care plan issuer from requiring a prior authorization for clinical laboratory services provided that

the managed care plan issuer imposes the requirement uniformly to all laboratories providing clinical laboratory services in the managed care plan's provider network; or

- an explicit definition of "managed care plan issuer."

The substitute includes the following:

- an expanded definition of "managed care plan" and additional definitions applicable to the provisions included in the substitute;
- a provision specifying that the term "laboratory benefits management program" includes a requirement for a physician or health care provider to provide advance notice of an order for clinical laboratory services;
- a prohibition against a managed care plan issuer requiring certain second opinions;
- certain restrictions on a managed care plan issuer's use of the applicable software and program;
- a requirement that supervision of the applicable software, program, or protocol be by a physician of the same or a similar specialty as the ordering physician or health care provider; and
- a prohibition relating to the construction of the bill's provisions.

The substitute revises the bill's prohibitions against certain requirements for clinical laboratory services with respect to the software and programs and includes an exception to a prohibition against the required use of the software or program that is applicable to a certain type of order for a clinical laboratory service regarding a specimen that is not obtained in a hospital or ambulatory surgical center.