

## **BILL ANALYSIS**

C.S.H.B. 2761  
By: Israel  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Consumers shopping for health coverage need access to easily understandable information on their coverage options to make an informed choice. Federal law requires certain traditional health insurers to provide shoppers and enrollees with an up-front, uniform coverage summary for health insurance. While state law provides for a similar summary requirement for certain short-term plans, sales of other alternative health coverage plans have increased in recent years, and, without such a summary requirement for those coverages, consumer confusion and deceptive sales practices may arise. C.S.H.B. 2761 seeks to ensure that consumers are given the information they need in a uniform and easily understandable manner by requiring the commissioner of insurance to prescribe a disclosure form template for certain health benefit plans and health expense arrangements and by providing for mandatory disclosure to consumers by issuers of those plans and arrangements.

### **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 rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2761 amends the Insurance Code to require the commissioner of insurance by rule to prescribe a disclosure form template for each type of health benefit plan or health expense arrangement to which the bill applies, which include the following:

- a health care sharing ministry;
- a discount health care program;
- a direct primary care arrangement that is sold or marketed by a person other than a physician contracting directly with a patient;
- any other plan or arrangement the commissioner determines is or could be marketed to an individual as an alternative to major medical coverage; and
- an individual accident and health insurance policy or group accident and health insurance policy that is a fixed indemnity, specified disease, or medical indemnity policy, but only under the following conditions:
  - the policy is marketed by the insurer or a third party as an alternative to major medical coverage; or
  - the policy has a range of benefits that is similar to the range of benefits in major medical coverage and may be sold as stand-alone coverage because the issuer does not require a purchaser to be covered by major medical coverage.

The bill provides exceptions for a plan or arrangement for which the issuer is required to submit a summary of benefits and coverage to the U.S. secretary of health and human services and for short-term limited-duration insurance.

C.S.H.B. 2761 sets out the template's authorized content, which includes a summary of covered services, costs, and other related information, and requires the template to be presented in plain language and in a standardized format designed to facilitate consumer understanding. The bill authorizes the commissioner to prescribe as many templates as necessary to account for each type of plan or arrangement and to omit any information in a template if the information is inapplicable to the type of plan or arrangement for which the template is prescribed. The bill requires the Texas Department of Insurance (TDI) to incorporate the content for an outline of coverage into the template for a policy, if applicable.

C.S.H.B. 2761 requires the commissioner to consult with the attorney general in prescribing the template applicable to a health care sharing ministry and to consult with the Texas Medical Board in prescribing the template applicable to a direct primary care arrangement. The bill requires those templates to incorporate the applicable disclosures required under state law regarding the nature of those ministries and arrangements and the fact that they are not insurance.

C.S.H.B. 2761 sets out disclosure form review requirements as follows:

- requires an issuer, before selling, marketing, or providing one of the following insurance products, to submit to TDI for approval in the manner prescribed by commissioner rule a disclosure form on the product:
  - an individual accident and health insurance policy or group accident and health insurance policy to which the bill applies; or
  - an insurance product that the commissioner determines is or could be marketed as an alternative to major medical coverage; and
- requires an issuer that provides a consumer with a plan or arrangement that is subject to the bill's provisions but for which form approval is not required to submit to TDI for informational purposes in the manner prescribed by commissioner rule a disclosure form for each plan or arrangement offered by the issuer.

The disclosure forms must use the applicable template prescribed by the commissioner, but an issuer may modify the template for a plan or arrangement that is not able to be accurately represented by the template. The bill requires an issuer who modifies the template to clearly identify any changes made and explain the reason for those changes when submitting the form. The bill requires TDI to approve a disclosure form if it uses the appropriate template and accurately describes the plan or arrangement in a manner that is easily understandable to a consumer.

C.S.H.B. 2761 requires an issuer to provide to a consumer the disclosure form submitted to TDI along with an application, if applicable, on the following occasions:

- before the earliest of the time that the consumer completes an application, makes an initial premium payment, or makes any other payment in connection with coverage under or participation in the health benefit plan or health expense arrangement; and
- at the time the policy, certificate, or arrangement is issued or entered into.

The issuer must ensure that a consumer signs the disclosure form before the issuer accepts an application or payment for or issues or enters into the plan or arrangement. An electronic signature must comply with applicable rules and state law. The bill requires an issuer to retain a signed disclosure form until the fifth anniversary of the date the issuer receives the form and to make the form available to TDI on request.

C.S.H.B. 2761 authorizes TDI to take an enforcement action against an issuer that violates the bill's provisions. The bill grants the commissioner rulemaking authority to implement the bill's provisions and requires the commissioner to adopt rules necessary for that implementation not later than September 1, 2022. Those rules are not subject to the requirement for rules increasing

costs to regulated persons. The bill applies only to a health benefit plan or health expense arrangement delivered, issued for delivery, entered into, or renewed on or after September 1, 2022.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2761 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 changes the provisions in the original that established the applicability of the bill's provisions as follows:

- does not include individual health maintenance organization coverage;
- limits the circumstances under which an individual accident and health insurance policy or a group accident and health insurance policy is subject to the bill's provisions;
- limits the applicable direct primary care arrangements to those sold or marketed by a person other than a physician contracting directly with a patient;
- includes a plan or arrangement the commissioner determines is or could be marketed as an alternative to major medical coverage; and
- does not include a plan or arrangement that the commissioner determines is or could be marketed as an alternative or supplement to an employer-provided health benefit plan or health benefit plan coverage regulated under the federal Patient Protection and Affordable Care Act.

The substitute includes a provision that was not in the original exempting the commissioner's rules from the requirement for rules increasing costs to regulated persons.

The substitute replaces the original's requirement for a template to include certain information with an authorization for the template to include that information, if applicable, and makes certain revisions to the content.

The substitute includes a requirement that was not in the original for TDI to incorporate the content for an outline of coverage into the template for a policy, if applicable.

The original required an issuer, before selling, marketing, or providing any plan or arrangement to which the bill applies, to submit to TDI for approval a disclosure form for each plan or arrangement offered by the issuer. The substitute requires disclosure forms to be submitted for approval only for specified types of insurance products and requires disclosure forms for other applicable plans or arrangements to be submitted to TDI for informational purposes.

The substitute includes a requirement that was not in the original for an issuer to provide an application, if applicable, on the same occasions that an issuer is required to provide a disclosure form.

The substitute changes from January 1, 2022, in the original, to September 1, 2022, the deadline by which the commissioner is required to adopt rules necessary to implement the bill's provisions.

The original includes a procedural provision making the bill's provisions applicable to a health benefit plan or health expense arrangement delivered, issued for delivery, entered into, or renewed on or after January 1, 2022. The substitute changes that date to September 1, 2022.