

By: Schwertner

S.B. No. 245

A BILL TO BE ENTITLED

AN ACT

relating to the adequacy and effectiveness of managed care plan networks.

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

SECTION 1. Section 108.002(9), Health and Safety Code, is amended to read as follows:

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization;

(B) a preferred provider or exclusive provider benefit plan issuer under Chapter 1301, Insurance Code; or

(C) [~~(B)~~] an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

SECTION 2. Section 501.001, Insurance Code, is amended to read as follows:

Sec. 501.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Managed care plan" means:

(A) a health maintenance organization plan provided under Chapter 843;

(B) a preferred provider benefit plan, as defined by Section 1301.001; or

(C) an exclusive provider benefit plan, as defined by Section 1301.001.

1 (2) "Office" [~~,"office"~~] means the office of public
2 insurance counsel.

3 SECTION 3. Section 501.151, Insurance Code, is amended to
4 read as follows:

5 Sec. 501.151. POWERS AND DUTIES OF OFFICE. The office:

6 (1) may assess the impact of insurance rates, rules,
7 and forms on insurance consumers in this state; [~~and~~]

8 (2) shall advocate in the office's own name positions
9 determined by the public counsel to be most advantageous to a
10 substantial number of insurance consumers;

11 (3) shall monitor the adequacy of networks offered by
12 managed care plans in this state; and

13 (4) may advocate for consumers in the office's own
14 name:

15 (A) positions to strengthen the overall adequacy
16 or oversight of networks offered by managed care plans in this
17 state; and

18 (B) positions to strengthen the adequacy or
19 oversight of a particular network offered by a managed care plan in
20 this state, including by:

21 (i) opposing, at the public counsel's
22 discretion, the department's approval of a managed care plan's
23 filing, application, or request related to the adequacy of a
24 network offered by the managed care plan in this state, including
25 any filings, applications, and requests related to access plans or
26 waivers of network adequacy requirements, when applicable; and

27 (ii) filing complaints with the department

1 regarding the failure of a particular managed care plan to satisfy
2 applicable network adequacy requirements, including requirements
3 to maintain accurate provider network directories.

4 SECTION 4. Section 501.153, Insurance Code, is amended to
5 read as follows:

6 Sec. 501.153. AUTHORITY TO APPEAR, INTERVENE, OR INITIATE.

7 (a) The public counsel:

8 (1) may appear or intervene, as a party or otherwise,
9 as a matter of right before the commissioner or department on behalf
10 of insurance consumers, as a class, in matters involving:

11 (A) rates, rules, and forms affecting:

12 (i) property and casualty insurance;

13 (ii) title insurance;

14 (iii) credit life insurance;

15 (iv) credit accident and health insurance;

16 or

17 (v) any other line of insurance for which
18 the commissioner or department promulgates, sets, adopts, or
19 approves rates, rules, or forms;

20 (B) rules affecting life, health, or accident
21 insurance; or

22 (C) withdrawal of approval of policy forms:

23 (i) in proceedings initiated by the
24 department under Sections 1701.055 and 1701.057; or

25 (ii) if the public counsel presents
26 persuasive evidence to the department that the forms do not comply
27 with this code, a rule adopted under this code, or any other law;

1 (2) may initiate or intervene as a matter of right or
2 otherwise appear in a judicial proceeding involving or arising from
3 an action taken by an administrative agency in a proceeding in which
4 the public counsel previously appeared under the authority granted
5 by this chapter;

6 (3) may appear or intervene, as a party or otherwise,
7 as a matter of right on behalf of insurance consumers as a class in
8 any proceeding in which the public counsel determines that
9 insurance consumers are in need of representation, except that the
10 public counsel may not intervene in an enforcement or parens
11 patriae proceeding brought by the attorney general; ~~and~~

12 (4) may appear or intervene before the commissioner or
13 department as a party or otherwise on behalf of small commercial
14 insurance consumers, as a class, in a matter involving rates,
15 rules, or forms affecting commercial insurance consumers, as a
16 class, in any proceeding in which the public counsel determines
17 that small commercial consumers are in need of representation;

18 (5) may appear or intervene in a proceeding or hearing
19 before the commissioner or department as a party or otherwise on
20 behalf of consumers, as a class, in a matter relating to the
21 adequacy of a network offered by a managed care plan; and

22 (6) may file objections and request a hearing, to be
23 granted in the sole discretion of the commissioner, regarding any
24 application, filing, or request that a managed care plan files with
25 the department related to an access plan or waiver of a network
26 adequacy requirement.

27 (b) To assist the office in determining whether to request a

1 hearing under Subsection (a)(6), a managed care plan must file with
2 the office, at the same time that it makes such filing with the
3 department, a copy of:

4 (1) any network adequacy waiver request, application,
5 or filing, including any attachments or supporting documentation;
6 or

7 (2) any access plan filing, request, or application,
8 including any attachments or supporting documentation.

9 (c) Nothing in this chapter may be construed as authorizing
10 a managed care plan to request a waiver of network adequacy
11 requirements or to use an access plan unless otherwise authorized
12 by law or regulation.

13 SECTION 5. Section 501.154, Insurance Code, is amended to
14 read as follows:

15 Sec. 501.154. ACCESS TO INFORMATION. The public counsel:

16 (1) is entitled to the same access as a party, other
17 than department staff, to department records available in a
18 proceeding before the commissioner or department under the
19 authority granted to the public counsel by this chapter; ~~and~~

20 (2) is entitled to obtain discovery under Chapter
21 2001, Government Code, of any nonprivileged matter that is relevant
22 to the subject matter involved in a proceeding or submission before
23 the commissioner or department as authorized by this chapter; and

24 (3) is entitled to all filings, including any
25 attachments and supporting documentation, made by a managed care
26 plan relating to the adequacy of a network offered by the plan.

27 SECTION 6. Section 501.157, Insurance Code, is amended to

1 read as follows:

2 Sec. 501.157. PROHIBITED INTERVENTIONS OR APPEARANCES.

3 Except as otherwise provided by this code, the [The] public counsel
4 may not intervene or appear in:

5 (1) any proceeding or hearing before the commissioner
6 or department, or any other proceeding, that relates to approval or
7 consideration of an individual charter, license, certificate of
8 authority, acquisition, merger, or examination; or

9 (2) any proceeding concerning the solvency of an
10 individual insurer, a financial issue, a policy form, advertising,
11 or another regulatory issue affecting an individual insurer or
12 agent.

13 SECTION 7. Section 501.159(a), Insurance Code, is amended
14 to read as follows:

15 (a) Notwithstanding this chapter, the office may submit
16 written comments to the commissioner and otherwise participate
17 regarding individual insurer filings:

18 (1) made under Chapters 2251 and 2301 relating to
19 insurance described by Subchapter B, Chapter 2301; or

20 (2) relating to the adequacy of a network offered by a
21 managed care plan.

22 SECTION 8. Subchapter D, Chapter 501, Insurance Code, is
23 amended by adding Section 501.161 to read as follows:

24 Sec. 501.161. COMPLAINTS. (a) The office may file a
25 complaint with the department on discovering that a managed care
26 plan:

27 (1) is operating, has operated, or is seeking to

1 operate with an inadequate network in this state;

2 (2) potentially is in violation of, has been in
3 violation of, or seeks to operate in violation of a network adequacy
4 law or regulation in this state; or

5 (3) potentially has an inaccurate provider network
6 directory.

7 (b) The department shall keep an information file about each
8 complaint filed with the department by the office under this
9 section.

10 (c) If a written complaint is filed with the department, the
11 department, at least quarterly and until final disposition of the
12 complaint, shall notify each party to the complaint, including the
13 office, of the complaint's status unless the notice would
14 jeopardize an undercover investigation.

15 (d) Notwithstanding any other law, the office may post on
16 its Internet website any complaint that the office files with the
17 department under this section.

18 SECTION 9. The heading to Subchapter F, Chapter 501,
19 Insurance Code, is amended to read as follows:

20 SUBCHAPTER F. DUTIES RELATING TO MANAGED CARE PLANS [~~HEALTH~~
21 ~~MAINTENANCE ORGANIZATIONS~~]

22 SECTION 10. Section 501.251, Insurance Code, is amended to
23 read as follows:

24 Sec. 501.251. COMPARISON OF MANAGED CARE PLANS [~~HEALTH~~
25 ~~MAINTENANCE ORGANIZATIONS~~]. (a) The office shall develop and
26 implement a system to compare and evaluate, on an objective basis,
27 the quality of care provided by, the adequacy of networks offered

1 by, and the performance of managed care plans [~~health maintenance~~
2 ~~organizations established under Chapter 843~~].

3 (b) In conducting comparisons under the system described by
4 Subsection (a), the office shall compare:

5 (1) health maintenance organizations to other health
6 maintenance organizations;

7 (2) preferred provider benefit plans to other
8 preferred provider benefit plans; and

9 (3) exclusive provider benefit plans to other
10 exclusive provider benefit plans.

11 (c) In developing the system, the office may use information
12 or data from a person, agency, organization, or governmental unit
13 that the office considers reliable.

14 SECTION 11. Section 501.252, Insurance Code, is amended to
15 read as follows:

16 Sec. 501.252. ANNUAL CONSUMER REPORT CARDS. (a) The office
17 shall develop and issue annual consumer report cards that identify
18 and compare, on an objective basis, managed care plans [~~health~~
19 ~~maintenance organizations in this state~~].

20 (b) The consumer report cards required by Subsection (a)
21 shall:

22 (1) include comparisons of types of managed care plans
23 in the same manner as provided by Section 501.251(b);

24 (2) include information, evaluations, and comparisons
25 regarding the adequacy of networks offered by the particular type
26 of managed care plan that is the subject of a consumer report card;

27 and

1 (3) at the discretion of the office, be staggered for
2 release throughout the year based on the type of managed care plan
3 that is the subject of the consumer report card.

4 (c) Notwithstanding Subsection (b)(3), all consumer report
5 cards for a particular type of managed care plan must be released at
6 the same time.

7 (d) The consumer report cards may be based on information or
8 data from any person, agency, organization, or governmental unit
9 that the office considers reliable.

10 (e) Notwithstanding Subsection (d), in developing the
11 information required under Subsection (b)(2), the office may use
12 information or data that is self-reported to the department or to
13 the public by a managed care plan.

14 (f) [~~(b)~~] The office may not endorse or recommend a specific
15 managed care [~~health maintenance organization or~~] plan, or
16 subjectively rate or rank managed care [~~health maintenance~~
17 ~~organizations or~~] plans or managed care plan issuers, other than
18 through comparison and evaluation of objective criteria.

19 (g) [~~(e)~~] The office shall provide a copy of any consumer
20 report card on request on payment of a reasonable fee.

21 SECTION 12. It is the intent of the legislature to provide
22 the office of public insurance counsel with the flexibility to
23 establish a timeline for the implementation, development, and
24 initial issuance of annual consumer report cards under Section
25 501.252, Insurance Code, as amended by this Act, in a manner that
26 best uses current office of public insurance counsel resources.

27 SECTION 13. This Act takes effect September 1, 2021.