

## **BILL ANALYSIS**

H.B. 3195  
By: Bonnen  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Despite state law providing for certain claim payments, audits, appeals, and remedies for health care providers, there may still be significant gaps in the law, leaving providers vulnerable in vital areas. H.B. 3195 seeks to address these gaps by changing the regulation and implementation of health insurance preferred provider benefit plans to protect plan providers from retaliation that may occur during the contract renewal period solely as a result of unrelated disputes in the claims process.

### **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 4 of this bill.

### **ANALYSIS**

H.B. 3195 amends the Insurance Code to set out provisions relating to the conduct of insurers providing preferred provider benefit plans with respect to physician and health care provider contracts and claims.

H.B. 3195 specifies that, for purposes of the prohibition against an insurer engaging in any retaliatory action against a physician or health care provider because the physician or provider has reasonably filed a complaint against the insurer on behalf of an insured or has appealed a decision of the insurer, a retaliatory action includes the following:

- implementing measurable penalties in the contract negotiation process;
- engaging in an unfair or deceptive practice, including not listing the physician or provider in the network directory or requiring the physician or provider to submit medical records with each claim;
- arbitrarily reducing the physician's or provider's fees on the insurer's fee schedule; and
- otherwise making changes to material contractual terms that are adverse to the physician or provider.

The bill makes the prohibited retaliatory actions specified by the bill inapplicable to a freestanding emergency medical care facility.

H.B. 3195 requires an insurer that determines all or a portion of a clean claim is not payable and the claim was submitted electronically by a preferred provider that is not a freestanding emergency medical care facility to provide the requisite notice of that determination electronically. The bill limits the applicability of a provision authorizing an insurer to notify a preferred provider that does not supply information reasonably requested by the insurer in

connection with a claim audit that the provider must provide the information by a certain deadline or forfeit the amount of the claim and, if the provider does not provide the information, to recover the amount of the claim to a provider that is a freestanding emergency medical care facility. The bill makes this authorization mandatory with regard to a preferred provider that is not such a facility. The bill requires an insurer to make such a request and provide certain information relating to an audited claim electronically if the clean claim was electronically submitted by a preferred provider that is not a freestanding emergency medical care facility.

H.B. 3195 prohibits an insurer from recovering a payment on an audited claim submitted by a preferred provider other than a freestanding emergency medical care facility until a final audit is completed. The bill requires an insurer to provide written notice to the preferred provider, other than a freestanding emergency medical care facility, of the insurer's failure to timely complete an audit not later than the 15th day after the date on which the insurer is required to complete the audit.

H.B. 3195 requires an insurer to provide a reasonable mechanism for an appeal requested by a preferred provider or by a physician or health care provider, other than a freestanding emergency medical care facility, who disagrees with a refund request made by the insurer based on a claim audit or with a request for recovery of an overpayment, respectively. The bill does the following:

- requires the review mechanisms to incorporate a review panel in an advisory role only;
- requires such a review panel to be composed of at least three preferred provider representatives of the same or similar specialty as the affected preferred provider selected by the insurer from a list of preferred providers;
- requires the preferred providers contracting with the insurer in the applicable service area to provide the list of preferred provider representatives to the insurer; and
- requires the insurer, on request and if applicable, to provide to the affected preferred provider the panel's composition and recommendation and, if the insurer's determination is contrary to the panel's recommendation, a written explanation of that determination.

H.B. 3195 requires the commissioner of insurance by rule to establish procedures for a preferred provider, other than a freestanding emergency medical care facility, to submit a request for the Texas Department of Insurance (TDI) to review a claim audit conducted by an insurer. The TDI review of an audit is a contested case under the Administrative Procedure Act. The bill requires TDI to award compensatory damages to the preferred provider incurred as a result of the audit and order the insurer to pay to TDI the costs incurred by TDI in reviewing the audit if TDI determines that the audit, as follows:

- resulted in unreasonable costs for the preferred provider;
- unnecessarily delayed or prevented payment of a claim; or
- otherwise violated applicable statutory provisions relating to prompt payment of claims or rules adopted under such provisions.

H.B. 3195 applies to a claim for payment made on or after the bill's effective date unless the claim is made under a contract that was entered into before the bill's effective date and that, at the time the claim is made, has not been renewed or was last renewed before the bill's effective date.

#### **EFFECTIVE DATE**

September 1, 2023.