

AN ACT

relating to certain contract provisions and conduct affecting health care provider networks.

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

SECTION 1. Section 1458.001, Insurance Code, is amended by adding Subdivisions (1-a), (1-b), (4-a), (4-b), and (5-a) to read as follows:

(1-a) "Anti-steering clause" means a provision in a provider network contract that restricts the ability of a general contracting entity to encourage an enrollee to obtain a health care service from a competitor of the provider, including offering incentives to encourage enrollees to use specific providers.

(1-b) "Anti-tiering clause" means a provision in a provider network contract that:

(A) restricts the ability of a general contracting entity to introduce or modify a tiered network plan or assign providers into tiers; or

(B) requires a general contracting entity to place all members of a provider in the same tier of a tiered network plan.

(4-a) "Gag clause" means a provision in a provider network contract that restricts the ability of a general contracting entity or provider to disclose:

(A) price or quality information, including the

1 allowed amount, negotiated rates or discounts, fees for services,
2 or other claim-related financial obligations included in the
3 contract, to a governmental entity as authorized by law or its
4 contractors or agents, an enrollee, a treating provider of an
5 enrollee, a plan sponsor, or potential eligible enrollees and plan
6 sponsors; or

7 (B) out-of-pocket costs to an enrollee.

8 (4-b) "General contracting entity" means a person who
9 enters into a direct contract with a provider for the delivery of
10 health care services to covered individuals regardless of whether
11 the person, in the ordinary course of business, establishes a
12 provider network for access by another party. The term does not
13 include a health care provider or facility unless the provider or
14 facility is entering into the contract in the provider's or
15 facility's role as a health benefit plan.

16 (5-a) "Most favored nation clause" means a provision
17 in a provider network contract that:

18 (A) prohibits or grants an option to prohibit:

19 (i) a provider from contracting with
20 another general contracting entity to provide health care services
21 at a lower rate; or

22 (ii) a general contracting entity from
23 contracting with another provider to provide health care services
24 at a higher rate;

25 (B) requires or grants an option to require:

26 (i) a provider to accept a lower rate for
27 health care services if the provider agrees with another general

1 contracting entity to accept a lower rate for the services; or

2 (ii) a general contracting entity to pay a
3 higher rate for health care services if the entity agrees with
4 another provider to pay a higher rate for the services;

5 (C) requires or grants an option to require
6 termination or renegotiation of an existing provider network
7 contract if:

8 (i) a provider agrees with another general
9 contracting entity to accept a lower rate for providing health care
10 services; or

11 (ii) a general contracting entity agrees
12 with a provider to pay a higher rate for health care services; or

13 (D) requires:

14 (i) a provider to disclose the provider's
15 contractual reimbursement rates with other general contracting
16 entities; or

17 (ii) a general contracting entity to
18 disclose the general contracting entity's contractual
19 reimbursement rates with other providers.

20 SECTION 2. Section [1458.101](#), Insurance Code, is amended by
21 adding Subsections (g), (h), and (i) to read as follows:

22 (g) A provider may not:

23 (1) offer to a general contracting entity a written
24 provider network contract that includes an anti-steering,
25 anti-tiering, gag, or most favored nation clause;

26 (2) enter into a provider network contract that
27 includes an anti-steering, anti-tiering, gag, or most favored

1 nation clause; or

2 (3) amend or renew an existing provider network
3 contract previously entered into with a general contracting entity
4 so that the contract as amended or renewed adds or retains an
5 anti-steering, anti-tiering, gag, or most favored nation clause.

6 (h) Any provision in a provider network contract that is an
7 anti-steering, anti-tiering, gag, or most favored nation clause is
8 void and unenforceable. The remaining provisions in the provider
9 network contract remain in effect and are enforceable.

10 (i) A health benefit plan issuer that encourages an enrollee
11 to obtain a health care service from a particular provider,
12 including offering incentives to encourage enrollees to use
13 specific providers, or that introduces or modifies a tiered network
14 plan or assigns providers into tiers has a fiduciary duty to the
15 enrollee or policyholder to engage in that conduct only for the
16 primary benefit of the enrollee or policyholder.

17 SECTION 3. Notwithstanding Section [1458.101](#), Insurance
18 Code, as amended by this Act, an anti-steering or anti-tiering
19 provision in a provider network contract that exists on the
20 effective date of this Act and that would otherwise be prohibited by
21 the provisions of this Act remains in effect and enforceable until
22 the earlier of:

23 (1) the effective date of an amendment to the provider
24 network contract that eliminates the anti-steering or anti-tiering
25 provision from the provider network contract and that is entered
26 into in accordance with the provider network contract's terms; or

27 (2) December 31, 2023.

1 SECTION 4. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 711 was passed by the House on April 25, 2023, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 711 on May 25, 2023, by the following vote: Yeas 137, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 711 was passed by the Senate, with amendments, on May 21, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor