By: Schwertner S.B. No. 1140

(In the Senate - Filed February 23, 2023; March 9, 2023, read first time and referred to Committee on Health & Human Services; April 6, 2023, reported favorably by the following vote: Yeas 9, Nays 0; April 6, 2023, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Kolkhorst	X			
Perry	X			
Blanco	X			
Hall	X			
Hancock	X			
Hughes	X			
LaMantia	X			
Miles	X			
Sparks	X			

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.

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

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

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

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

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

(3) shall monitor the adequacy of networks offered by managed care plans in this state by reviewing related filings, applications, and requests, including filings, applications, and requests related to access plans or waivers of network adequacy requirements, for accuracy, accessibility of health care services, and reasonable access to covered benefits; and

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

(A) positions to strengthen the overall adequacy or oversight of networks offered by managed care plans in this

state; and

(B) positions to strengthen the adequacy or oversight of a particular network offered by a managed care plan in this state.

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

Sec. 501.153. AUTHORITY TO APPEAR, INTERVENE, OR INITIATE. (a) The public counsel:

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

(A) rates, rules, and forms affecting:

(i) property and casualty insurance;

(ii) title insurance;

(iii) credit life insurance;

(iv) credit accident and health insurance; or

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

(B) rules affecting life, health, or accident insurance; [~~or~~]

(C) a managed care plan's ability to provide accessible health care services and reasonable access to covered benefits; or

(D) withdrawal of approval of policy forms:

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

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

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

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

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

(5) may file objections and request a hearing regarding any application, filing, or request that a managed care plan files with the department related to an access plan or waiver of a network adequacy requirement, including an application, filing, or request that is currently pending or that has already been approved.

(b) To assist the office in determining whether to request a hearing under Subsection (a)(5), the office is entitled to:

(1) review all relevant filings and information that a managed care plan submits to the department, including communications related to the filing; and

(2) communicate with a managed care plan regarding a submission described by Subdivision (1).

(c) A matter described by Subsection (a)(5) is a contested case that may be subject to informal disposition or heard by the State Office of Administrative Hearings under Chapter 2001, Government Code.

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

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

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

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

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

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

SECTION 6. Section 501.157, Insurance Code, is amended to read as follows:

Sec. 501.157. PROHIBITED INTERVENTIONS OR APPEARANCES. Except as otherwise provided by this code, the [~~The~~] public counsel may not intervene or appear in:

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

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

SECTION 7. Section 501.159, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

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

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

(2) relating to the adequacy of a network offered by a managed care plan, regardless of whether the filing is pending or has already been approved.

(a-1) The office may comment on or otherwise participate regarding the effect or implementation of a filing described by Subsection (a)(2), including comments regarding concerns that a managed care plan:

(1) is operating with an inadequate network in this state;

(2) may be in violation of a network adequacy law or regulation; or

(3) has an inaccurate provider network directory.

(a-2) For written comments filed with the department regarding filings described by Subsection (a)(2), the department shall:

(1) respond to the comments promptly and provide updates to the office and the managed care plan regarding actions taken by the department or other actions taken to address issues raised in the comments; and

(2) consider conducting a targeted market conduct examination under Chapter 751 or another form of investigation to determine the existence and extent of potential violations.

SECTION 8. The heading to Subchapter F, Chapter 501, Insurance Code, is amended to read as follows:

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

SECTION 9. Section 501.251, Insurance Code, is amended to read as follows:

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

~~organizations established under Chapter 843~~].

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

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

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

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

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

SECTION 10. Section 501.252, Insurance Code, is amended to read as follows:

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

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

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

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

(c) Notwithstanding Subsection (b)(2), all consumer report cards for a particular type of managed care plan must be released at the same time.

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

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

(f) [~~(c)~~] The office shall provide a copy of any consumer report card on request on payment of a reasonable fee.

SECTION 11. It is the intent of the legislature to provide the office of public insurance counsel with the flexibility to establish a timeline for the implementation, development, and initial issuance of annual consumer report cards under Section 501.252, Insurance Code, as amended by this Act, in a manner that best uses current office of public insurance counsel resources.

SECTION 12. This Act takes effect September 1, 2023.

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