HOUSE OF REPRESENTATIVES
COMPILATION OF PUBLIC COMMENTS

Submitted to the Committee on Human Services

For HB 5018

Compiled on: Tuesday, April 25, 2023 11:28 PM

Note: Comments received by the committee reflect only the view of the individual(s) submitting the comment, who retain sole responsibility for the content of the comment. Neither the committee nor the Texas House of Representatives takes a position on the views expressed in any comment. The committee compiles the comments received for informational purposes only and does not exercise any editorial control over comments.

Hearing Date: April 25, 2023 8:00 AM

Jessica Lynch
Texas Association of Health Plans
Austin, TX

The Texas Association of Health Plans opposes HB 5018 because it creates unnecessary delays in managed care plans' efforts to recover payments made to providers suspected of fraud and abuse involving the state's Electronic Visit Verification (EVV) system.

The federal government mandates the use of EVV by attendants delivering Medicaid services to confirm that services were delivered. EVV electronically documents and verifies in-home personal care or home health care service delivery by recording the date, time, service type, and location through a smartphone, tablet, home phone landline, or other state-approved devices.

The Heath and Human Services Office of Inspector General has repeatedly discovered fraudulent misuse of the EVV system, including cases where attendants do not show up but still clock in as if they are providing services. Examples include attendants clocking in without providing services, clocking in after a client's death, or clocking in at a client's home while the client is in an inpatient facility.

However, it is important to note that a vast majority of personal care attendants work hard to help people on Medicaid who are sick or disabled continue to live in their homes. This is why, in 2019, the Texas Legislature enacted legislation aimed at striking a balance between allowing MCOs to recoup payments from providers who fraudulently used the EVV system and ensuring due process, without imposing excessive burdens or causing provider abrasion. SB 1991 (86R) required the Health and Human Services Commission (HHSC) to establish due process procedures an MCO must follow in order to recoup an overpayment made to a provider related to missing EVV information. SB 1991 required that an MCO must give a provider at least 60 days to correct a deficiency in a claim before the MCO begins any efforts to recoup any overpayments.

SB 1911 aimed to ensure that the state's EVV rules were not overly burdensome for compliant providers. HHSC worked closely with stakeholders, including the Texas Association for Home Care and Hospice, MCOs, and licensed home and community support services agencies, to develop these rules. During this process, HHSC received provider feedback confirming that the rules aligned with legislative intent.

TAHP is concerned that HB 5018 would undermine the progress made with SB 1911 by amending rules related to fraud and abuse. The proposed legislation would permit providers, after they have exhausted all appeal rights, to submit additional documentation for the claim or resubmit the claim before an MCO may initiate recoupment efforts. We believe this essentially creates a loophole for providers to avoid recoupment even after exhausting all appeals, potentially resulting in a permanent delay of MCO recovery efforts.

In light of these concerns, we respectfully request that you oppose HB 5018, as it could significantly hinder fraud and abuse recovery efforts by MCOs.

Kay Ghahremani, CEO
Texas Association of Community Health Plans
Austin, TX

Dear Chairman Frank, Representative Raymond, and Committee Members,

The Texas Association of Community Health Plans is respectfully opposed to HB 5018. The Texas Association of Community Health Plans is comprised of 11 Texas health plans (also known as Managed Care Organizations and MCOs) owned by Texas public and non-profit health systems. We are locally based health insurance companies that provide an alternative to the national publicly traded health plans. Our health plans are mission-driven organizations dedicated to improving the health and welfare of Texans at low and moderate incomes. In addition to serving the Texas Medicaid Program, which is the bulk of business across our health plans, several member health plans also provide health coverage to employees of their health systems, the Marketplace, and/or the commercial market.

This bill would create unnecessary delays in efforts by the MCOs to recover payments made to providers suspected of fraud and abuse involving HHSC's Electronic Visit Verification (EVV) system. It would allow a provider to resubmit a claim for which the provider has already exhausted all appeals. Exhausting all appeals means the MCO has thoroughly reviewed the claim, consulted with the provider and accepted additional information from them, and made a final determination. This bill would unnecessarily lengthen the process of recovery of overpayments.

Also, the bill strikes "a" and replaces it with "any" in Section 531.2131(f)(2). This change makes ambiguous the provider type for which the bill applies. If the intent is to give ALL providers an additional 60 days beyond when all appeals are exhausted, that would be a very significant change. That would slow the entire process for MCO recoveries of overpayments and potentially reduce the ability to actually recover the funds.

We caution lawmakers to fully understand the intent of HB 5018 before casting a vote. We request for Committee members to vote NO on HB 5018.