

# SENATE AMENDMENTS

**2<sup>nd</sup> Printing**

By: Frank, Harless, Bonnen, Talarico

H.B. No. 711

A BILL TO BE ENTITLED

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

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

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

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

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

(A) prohibits or grants an option to prohibit:

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

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

(B) requires or grants an option to require:

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

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

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

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

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

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

(D) requires:

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

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

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

(g) A provider may not:

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

(2) enter into a provider network contract that 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. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2023.

ADOPTED

MAY 21 2023

FLOOR AMENDMENT NO. 1

*Latey Spaw*  
Secretary of the Senate BY:

*L. W. Kell*

Amend H.B. 711 (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Notwithstanding Section 1458.101, Insurance Code, as amended by this Act, an anti-steering or anti-tiering provision in a provider network contract that exists on the effective date of this Act and that would otherwise be prohibited by the provisions of this Act remains in effect and enforceable until the earlier of:

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

(2) December 31, 2023.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 22, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB711** by Frank (Relating to certain contract provisions and conduct affecting health care provider networks.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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Based on the analysis of the Department of Insurance, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JMc, NPe, LBI

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 5, 2023**

**TO:** Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB711** by Frank (Relating to certain contract provisions and conduct affecting health care provider networks.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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Based on the analysis of the Department of Insurance, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JMc, NPe, LBI

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 31, 2023**

**TO:** Honorable Sam Harless, Chair, House Committee on Health Care Reform, Select

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB711** by Frank (relating to certain contract provisions and conduct affecting health care provider networks.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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Based on the analysis of the Department of Insurance, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JMc, NPe, LBI



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 17, 2023**

**TO:** Honorable Sam Harless, Chair, House Committee on Health Care Reform, Select

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB711** by Frank (Relating to certain contract provisions and conduct affecting health care provider networks.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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Based on the analysis of the Department of Insurance, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JMc, NPe, LBI