

BILL ANALYSIS

H.B. 2221
By: Hull
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas anti-rebating laws do not prohibit an insurer from offering certain services such as wellness programs, will preparation, and funeral planning to customers as long as the benefits are reasonably related to the type of insurance product purchased and are included in the policy. In 2021, the National Association of Insurance Commissioners (NAIC) updated its model act to allow these additional benefits, referred to as "value-added services," to be provided to consumers without having to be included in the policy. The bill author has informed the committee that this gives insurers the flexibility to easily update these services offered to customers without unnecessary regulatory requirements. Additionally, Texas anti-rebating laws applicable to life and health insurers are currently located in Insurance Code statutes that contain a private cause of action as an enforcement mechanism, potentially exposing these insurers to unnecessary lawsuits rather than enforcement actions by the Texas Department of Insurance, and the anti-rebating laws applicable to property and casualty insurers are located in a separate section of the code. H.B. 2221 seeks to maintain state requirements that protect consumers from inappropriate inducement offers while simplifying the innovation and provision of these value-added services to consumers by setting out uniform standards of prohibited acts and practices for life insurance, annuity contracts, accident and health insurance, and health care plans and providing for more uniformity in well-recognized exceptions to existing rebate and discrimination laws for certain value-added services, acts, or practices recognized in existing law or contained in uniform model laws developed and recommended by the NAIC.

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 commissioner of insurance in SECTION 2 of this bill.

ANALYSIS

H.B. 2221 amends the Insurance Code to set out uniform standards of prohibited acts and practices for life insurance, annuity contracts, accident and health insurance, and health care plans that are applicable to an insurance company writing life insurance and annuities in Texas, an insurer authorized to engage in the business of accident and health insurance in Texas, and a health maintenance organization (HMO) operating under the Texas Health Maintenance Organization Act, except as otherwise provided by the bill, and to provide for more uniformity in well-recognized exceptions to existing rebate and discrimination laws for certain value-added services, acts, or practices recognized in existing law or contained in uniform model laws developed and recommended by the National Association of Insurance Commissioners.

Ancillary Products or Services and Prohibited Inducements

H.B. 2221 requires the cost to an insurer, HMO, or agent for a loss-control or value-added product or service provided to an insured, annuitant, or enrollee to be reasonable in comparison to such an individual's premiums or coverage for the class of the individual's policy or contract. The bill requires the insurer, HMO, or agent to do the following:

- if providing such a product or service, ensure that the insured, annuitant, or enrollee is provided with contact information to assist with questions regarding the product or service;
- base the availability of the product or service on documented objective criteria;
- offer the product or service in a manner that is not unfairly discriminatory; and
- maintain the documented criteria and produce the criteria on request by the Texas Department of Insurance (TDI).

The bill defines "loss-control or value-added product or service" as a product or service offered or provided by an insurer, HMO, or agent, by or through an employee, affiliate, or third-party representative, to an insured, annuitant, or enrollee at no or reduced cost when such products or services are not specified in the insurance policy, annuity contract, or health care plan contract and that relates to the insurance, annuity, or health care plan coverage and is primarily designed to do one or more of the following:

- provide loss mitigation or loss control;
- reduce claim costs or claim settlement costs;
- provide education about liability risks or risk of loss to persons or property;
- monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- enhance health;
- enhance financial wellness through items such as education or financial planning services;
- provide post-loss services;
- provide incentives for behavioral changes to improve the health or reduce the risk of death or disability of an insured, annuitant, or enrollee; or
- assist in the administration of employee or retiree benefit insurance, annuity, or health care plan coverage.

H.B. 2221 prohibits an insurer, HMO, or agent from offering or providing insurance, annuity, or health care plan coverage as an inducement to the purchase of another policy or contract or otherwise using "free," "no cost," or words of similar meaning in an advertisement. The bill authorizes an insurer, HMO, or agent to do the following:

- offer or provide non-cash gifts, items, or services, including meals, to or charitable donations on behalf of a consumer in connection with the marketing, sale, purchase, or retention of policies or contracts of insurance, annuity, or health care plan coverage, provided that:
 - the cost does not exceed an amount determined to be reasonable by the commissioner of insurance per policy or contract year per term;
 - the offer is made in a manner that is not unfairly discriminatory; and
 - the consumer is not required to purchase, continue to purchase, or renew a policy or contract in exchange for the gift, item, or service; and
- conduct raffles or drawings to the extent permitted by state law, provided that:
 - there is no financial cost to participate;
 - the raffle or drawing does not obligate participants to purchase, continue to purchase, or renew a policy or contract;
 - the prizes are not valued in excess of a reasonable amount determined by the commissioner and the raffle or drawing is open to the public; and
 - the raffle or drawing is offered in a manner that is not unfairly discriminatory.

Practices Related to Life and Annuity Coverage

H.B. 2221 repeals statutory provisions regarding life and annuity coverage that relate to prohibited rates and inducements, unfair discrimination in life insurance and annuity contracts, certain practices not considered discrimination or inducement, and things of value not specified in a policy and instead sets out the following provisions applicable only to an insurance company writing life insurance and annuities in Texas.

Prohibited Rebates and Inducements

H.B. 2221 prohibits an insurer or agent, with respect to business written in Texas, from doing the following:

- knowingly permitting the making of, offering to make, or making a life insurance policy or annuity contract or an agreement regarding the policy or contract, other than as plainly expressed in the issued policy or contract;
- directly or indirectly paying, giving, or allowing or offering to pay, give, or allow as inducement to enter into a life insurance policy or annuity contract either a rebate of premiums payable on the policy or contract or a special favor or advantage in the dividends or other benefits of the policy or contract or a valuable consideration or inducement not specified in the policy or contract; or
- giving, selling, or purchasing or offering to give, sell, or purchase in connection with a life insurance policy or annuity contract or as inducement to enter into the policy or contract:
 - stocks, bonds, or other securities of an insurer or other corporation, association, or partnership;
 - dividends or profits accrued from the stocks, bonds, or securities; or
 - anything of value not specified in the contract.

The bill prohibits an insurer from permitting an agent, officer, or employee to issue or deliver as an inducement to enter into a life insurance policy or annuity contract company stock or other capital stock, a benefit certificate or share in a corporation, a security, or a special or advisory board contract or any other contract promising returns or profits. These provisions expressly do not prohibit issuing or delivering a participating insurance policy or annuity contract otherwise authorized by law.

Prohibited Distinctions and Discrimination

H.B. 2221 prohibits an insurer, with respect to a life insurance policy or annuity contract, from making or permitting a distinction or unfair discrimination between individuals of the same class and equal life expectancy regarding the rate charged, the dividend or other payable benefit, or any of the other terms of the policy or contract.

H.B. 2221 specifies that the limitations period for disciplinary action against an insurer, agent, or other license holder who is subject to TDI's jurisdiction does not apply to conduct that is considered a violation of the prohibition against distinctions and discrimination established under that bill provision.

Exemptions

H.B. 2221 exempts the following from consideration as a prohibited rebate, inducement, distinction, or discrimination:

- for a life insurance policy or annuity contract, a bonus payment to a policyholder or contract holder or other abatement in the policyholder's or contract holder's premiums provided wholly or partly out of surplus accumulated from nonparticipating policies or contracts if the payment or abatement is fair and equitable to policyholders and contract holders and is in the best interests of the insurer and the insurer's policyholders and contract holders;

- for a life insurance policy issued on an industrial debit plan, an allowance to a policyholder who has continuously for a specified period made premium payments directly to the insurer's office that is in an amount that fairly represents the insurer's savings in collection expenses;
- for a group insurance policy, a readjustment in the rate of premium based on the loss or expense experience under the policy at the end of a policy year if the adjustment is retroactive for only that policy year;
- for an annuity contract, a waiver of surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer or an affiliate of the same insurer that is part of the same holding company group if:
 - the waiver and the exchange are fully, fairly, and accurately explained to the contract holder in a manner that is not deceptive or misleading; and
 - the contract holder is given credit for the time that the previous contract was held in determining any surrender charges under the new contract;
- in connection with an offer or sale of a life insurance policy or annuity contract, a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less; or
- any loss-control or value-added service or product or other item allowed under the bill's provisions.

H.B. 2221 requires an insurer that offers to waive surrender charges for an annuity contract under these provisions to provide reasonable notice of that offer to the insurer's prospective or current contract holders in the same manner as an insurer that offers to waive or surrender charges for a life annuity contract under provisions repealed by the bill.

Practices Related to Accident and Health Coverage

H.B. 2221 repeals statutory provisions regarding accident and health coverage that relate to prohibited rates and inducements, certain practices not considered discrimination or inducement, things of value not specified in a policy, and programs promoting disease prevention, wellness, and health and instead sets out the following provisions applicable only to an insurer authorized to engage in the business of accident and health insurance in Texas and an HMO operating under the Texas Health Maintenance Organization Act.

Prohibited Rebates and Inducements

H.B. 2221 prohibits an insurer, HMO, or agent, with respect to accident and health insurance or health care plan coverage written in Texas, from doing the following:

- knowingly permitting the making of or offering of, offering to make, or making an accident and health insurance policy or health care plan contract or an agreement regarding the policy or contract other than as plainly expressed in the issued policy or contract;
- directly or indirectly paying, giving, or allowing or offering to pay, give, or allow as an inducement to enter into an accident and health insurance policy or health care plan contract a rebate of premiums payable on the policy or contract or a special favor or advantage in the dividends or other benefits of the policy or contract or a valuable consideration or inducement not specified in the policy or contract; or
- giving, selling, or purchasing or offering to give, sell, or purchase in connection with an accident and health insurance policy or health care plan contract or as an inducement to enter into the policy or contract:
 - stocks, bonds, or other securities of an insurer or other corporation, association, or partnership;
 - dividends or profits accrued from the stocks, bonds, or securities; or
 - anything of value not specified in the policy or contract.

The bill prohibits an insurer or HMO from permitting an agent, officer, or employee to issue or deliver as an inducement to entering into an insurance policy or health care plan contract company stock or other capital stock, a benefit certificate or share in a corporation, securities, or a special or advisory board contract or any other contract promising returns or profits. These provisions expressly do not prohibit an insurer or HMO from issuing or delivering a participating insurance policy or health care plan contract otherwise authorized by law.

H.B. 2221 establishes that the following premium discounts, rebates, or reductions do not violate those bill provisions prohibiting an insurer, HMO, or agent from taking certain action:

- a premium discount, rebate, or reduction established by a multiple employer welfare arrangement in otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention; or
- a premium discount, rebate, or reduction established by a small or large employer health benefit plan issuer in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for participation in programs promoting disease prevention, wellness, and health.

Prohibited Discrimination and Distinctions

H.B. 2221 prohibits an insurer or HMO, with respect to an accident and health insurance policy or health care plan contract and except as provided by the bill's provisions and other applicable statutory provisions specific to particular types of accident and health coverage or health care plan coverage, from making or permitting a distinction or an unfair discrimination between individuals of the same class and equal life expectancy regarding the rate charged, the dividend or other payable benefit, or any of the other policy or contract terms.

Exemptions

H.B. 2221 exempts the following from consideration as a prohibited rebate, inducement, or discrimination:

- for an accident and health policy or a health care plan contract, a bonus payment to a policyholder or contract holder or other abatement in the policyholder's or contract holder's premiums provided wholly or partly out of surplus accumulated from nonparticipating policies or contracts if the bonus or abatement is fair and equitable to policyholders or contract holders and is in the best interests of the insurer or HMO and its policyholders or contract holders;
- for a group insurance policy or health care plan contract, a readjustment in the rate of premium based on the loss or expense experience under the policy or contract at the end of a policy or contract year if the adjustment is retroactive for only that policy or contract year;
- in connection with an offer or sale of an accident and health insurance policy or health care plan contract, a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less; or
- a loss-control or value-added product or service or other item allowed under the bill's provisions.

The bill authorizes an insurer issuing an accident and health insurance policy or an HMO issuing a health care plan contract to establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of those incentives, for an insured or enrollee who participates in programs promoting disease prevention, wellness, or health. The bill specifies that such a discount, rebate, or reduction is not considered a prohibited rebate or inducement or unfair discrimination.

General Provisions

H.B. 2221 authorizes the commissioner to adopt reasonable rules necessary to implement the bill's provisions. The bill prohibits its provisions from being construed to do the following:

- permit conduct that is an unfair method of competition or a false, misleading, or deceptive act or practice under applicable state law; or
- prohibit an insurer, HMO, or agent from offering or giving to a consumer, for free or at a discounted price in a manner that is not unfairly discriminatory to consumers of the same class and of essentially the same hazard, a loss-control or value-added product or service relating to the risks covered under the relevant policy or contract, subject to the bill's provisions.

H.B. 2221 defines the following terms for purposes of its provisions:

- "agent" as a person authorized to act as an insurance agent as defined by reference to general statutory provisions relating to the licensing of insurance agents;
- "consumer" as a policyholder or potential policyholder, a certificate holder or potential certificate holder, an insured or potential insured, a contract holder or potential contract holder, an enrollee or potential enrollee, or an applicant for insurance, an annuity, or health care plan coverage;
- "enrollee" and "health care plan" by reference to the Texas Health Maintenance Organization Act; and
- "insurer" as an insurance company, including a reciprocal or interinsurance exchange, mutual insurance company, capital stock company, Lloyd's plan, fraternal benefit society, group hospital service corporation, or other legal entity authorized to engage in the business of life, accident, or health insurance or annuities in Texas.

H.B. 2221 applies only to an insurance policy, annuity contract, or health care plan contract that is delivered, issued for delivery, or renewed on or after January 1, 2026. A policy or contract delivered, issued for delivery, or renewed before that date is governed by the law as it existed immediately before the bill's effective date, and that law is continued in effect for that purpose.

Repealed Provisions

H.B. 2221 repeals the following Insurance Code provisions:

- Section 541.056;
- Section 541.057;
- Section 541.058;
- Section 543.003; and
- Section 1201.013.

EFFECTIVE DATE

September 1, 2025.