

BILL ANALYSIS

C.S.H.B. 1934
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that state law governing dental insurance is inadequate and lacks clarity with respect to the recovery of overpayments and third party access to provider network contracts with dentists. C.S.H.B. 1934 seeks to address these concerns and promote fairness and transparency by establishing clear requirements for overpayment recovery and for this third party access.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1934 amends the Insurance Code to establish requirements for overpayment recovery and third party access to provider networks for certain insurance policies and benefit plans that provide dental benefits.

Overpayment Recovery

C.S.H.B. 1934 limits the circumstances under which an applicable employee benefit plan or health insurance policy provider or issuer may recover an overpayment made to a dentist to those in which both:

- the provider or issuer provides written notice of the overpayment to the dentist, not later than the 180th day after the date the dentist receives the payment, that includes the basis and specific reasons for the request for recovery of funds; and
- the dentist either:
 - fails to provide a written objection to the request and does not make arrangements for repayment of the requested funds on or before the 45th day after the date the dentist receives the notice; or
 - objects to the request in accordance with the prescribed procedure and exhausts all rights of appeal.

The bill requires each such provider or issuer to provide a dentist with the opportunity to challenge an overpayment recovery request and establish written policies and procedures for a dentist to object. Those procedures must allow the dentist to access the claims information in dispute.

Third Party Access to Provider Networks

C.S.H.B. 1934 requires an applicable employee benefit plan or health insurance policy provider or issuer, at the time a provider network contract is entered into or when material modifications are made to the contract relevant to granting a third party access to the contract, to allow any dentist that is part of the provider network to elect not to participate in the third party access to the contract and to elect not to enter into a contract directly with the third party that will obtain access to that network. This requirement does not permit the provider or issuer to cancel or otherwise end a contractual relationship with a dentist if the dentist elects to not participate in or agree to third party access to the provider network contract.

C.S.H.B. 1934 authorizes an applicable employee benefit plan or health insurance policy provider or issuer that enters into a provider network contract with a dentist, or a contracting entity that has leased or acquired the contract, to grant a third party access to the contract or to a dentist's dental care services or contractual discounts provided under the contract only if the following conditions are satisfied:

- the contract or each plan or policy for which the contract was entered into, leased, or acquired includes certain disclosure language relating to the possibility of third party agreements;
- if applicable, the plan or policy for which the contract is leased or acquired provides certain notice of a dentist's right to elect not to participate in third party access;
- the third party accessing the contract agrees to comply with all of the original contract's terms;
- a third party's right to a dentist's discounted rate ceases as of the contract's termination date; and
- the provider, issuer, or other contracting entity does the following:
 - complies with certain requirements relating to the identification of third parties with access to the provider network;
 - requires a third party with access to the provider network to identify the source of any discount on all remittance advices or explanations of payment under which a discount is taken, except with respect to HIPAA-mandated electronic transactions;
 - provides network dentists with certain advance notice of a third party leasing, acquiring, or obtaining access to the provider network and certain advance notice of the contract's termination; and
 - makes a copy of the contract relied on in the adjudication of a claim available to a requesting network dentist within a specified time frame.

The advance notice requirements do not apply to a contracting entity that only organizes and leases networks but does not engage in the business of insurance. The bill prohibits a person from binding or requiring a dentist to perform dental care services under a contract that has been sold, leased, or assigned to a third party or for which a third party has otherwise obtained provider network access in violation of applicable bill provisions.

Applicability

C.S.H.B. 1934 provides exceptions to the applicability of its provisions establishing requirements for third party access to provider networks and applies only to the following:

- an employee benefit plan for a plan year that commences on or after January 1, 2022;
- a health insurance policy delivered, issued for delivery, or renewed on or after that date; and
- any provider network contract entered into on or after the bill's effective date in connection with one of those plans and policies.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1934 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute extends the deadline for a provider or issuer to provide written notice of an overpayment to the dentist to be eligible to seek recovery of the overpayment from the 90th day after the payment date to the 180th day after that date.

The substitute does not include a requirement for a provider or issuer to provide with each overpayment recovery request a copy of the policies and procedures for a dentist to object to the request. The substitute requires a provider or issuer instead to provide a dentist with the opportunity to challenge such a request.

The substitute does not require a provider or issuer to allow a dentist participating in a provider network contract to elect to not participate in or agree to third party access to the provider network at the time a contract is sold, leased, or renewed.

The substitute does not include a prohibition against a provider or issuer requiring that a dentist terminate or modify the dentist's preexisting contractual relationship with the provider or issuer based on the dentist's election to not participate in or agree to third party access. The substitute specifies instead that the bill provision establishing a dentist's right to make such an election does not permit the provider or issuer to cancel or otherwise end a contractual relationship with a dentist who makes that election.

The substitute revises the requirements for a provider, issuer, or other contracting entity to provide network dentists with certain advance notice of a third party leasing, acquiring, or obtaining access to the provider network and certain advance notice of the contract's termination as follows:

- establishes the option to provide such notice electronically;
- includes an exception from the notice requirements for a contracting entity that only organizes and leases networks but does not engage in the business of insurance; and
- changes the deadline for providing notice that a third party will lease, acquire, or obtain access to the provider network from at least 30 days before the lease, acquisition, or access takes effect to at least 30 days before the lease or access takes effect.

The substitute conditions the exemption from the requirements for third party access to provider networks for a provider network contract that is granted to one of the following entities on the entity agreeing to comply with all of the original contract's terms:

- a third party operating in accordance with the same brand licensee program as the provider, issuer, or other contracting entity selling or leasing the contract; or
- an entity that is an affiliate of the provider, issuer, or other contracting entity selling or leasing the contract.

The substitute does not include provider network contracts renewed on or after the bill's effective date among the contracts to which the bill applies.