

BILL ANALYSIS

C.S.H.B. 4051
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that anti-competitive practices in the health care market hurt patient access and increase costs. One example of such practices is the use of most favored nation clauses in provider network contracts, where insurance companies and large providers attempt to keep potential competitors from negotiating for rates more advantageous to patients. These clauses have been prohibited by a number of other states and have also been the subject of a Department of Justice antitrust lawsuit.

Furthermore, some insurance contracts prohibit providers from accepting direct payments from patients who have health insurance, even if it would be less expensive for the patient. The insurance claim process requires a large amount of time, money, and attention from a provider. Incentivizing direct payment when it makes sense could be beneficial for patients, providers, and insurers alike.

C.S.H.B. 4051 aims to improve competition in the health care market by prohibiting the use of most favored nation clauses in provider network contracts and prohibiting certain insurance contract provisions that do not allow patients who have health insurance to pay directly for a service. It would also ensure that anyone who is uninsured is not charged a higher price than someone with health insurance for the same service.

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. 4051 amends the Insurance Code to establish that a physician or health care provider may not be prohibited from accepting directly from an enrollee full payment for a health care service in lieu of submitting a claim to the enrollee's health benefit plan. The bill prohibits the charge for a health care service for which a physician or health care provider accepts such a direct payment or a payment from a patient without a health benefit plan from exceeding the lowest contract rate for the health care service allowable under any health benefit plan with respect to which the physician or health care provider is a contracted, preferred, or participating provider. The bill establishes the applicability of these provisions.

C.S.H.B. 4051 prohibits a contracting entity from taking the following actions:

- offering to a provider a provider network contract that includes a most favored nation clause;
- entering into a provider network contract that includes a most favored nation clause; or
- amending or renewing an existing provider network contract previously entered into with a provider so that the contract as amended or renewed adds or continues to include a most favored nation clause.

C.S.H.B. 4051 defines "most favored nation clause" as a provision in a provider network contract that does the following:

- prohibits or grants an option to prohibit:
 - a provider from contracting with another contracting entity to provide health care services at a lower rate; or
 - a contracting entity from contracting with another provider to provide health care services at a higher rate;
- requires or grants an option to require:
 - a provider to accept a lower rate for health care services if the provider agrees with another contracting entity to accept a lower rate for the services; or
 - a 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;
- requires or grants an option to require termination or renegotiation of an existing provider network contract if:
 - a provider agrees with another contracting entity to accept a lower rate for providing health care services; or
 - a contracting entity agrees with a provider to pay a higher rate for health care services; or
- requires a provider to disclose the provider's contractual reimbursement rates with other contracting entities or a contracting entity to disclose the contracting entity's contractual reimbursement rates with other providers.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4051 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.

Both the original and substitute prohibit a charge for a health care service for which a physician or health care provider accepts direct payment in lieu of a health insurance claim from exceeding the lowest contract rate for the service allowable under any health benefit plan with respect to which the physician or health care provider is a contracted, preferred, or participating provider. However, the substitute also applies this prohibition to a charge for a health care service for which a physician or health care provider accepts a payment from a patient without a health benefit plan.