

- SUBJECT:** Prohibiting discriminatory agent commissions by small employer carriers
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 7 ayes — Smithee, Averitt, Burnam, G. Lewis, J. Moreno, Olivo, Thompson  
0 nays  
2 absent — Eiland, Seaman
- WITNESSES:** For — Robert Desmond; Stacey Merritt, Texas Association of Health Underwriters  
Against — Mike Pollard, Texas Association of Life and Health Insurers  
On — Andrew Grove, Humana, Inc.; Ana M. Smith-Daley, Texas Department of Insurance
- BACKGROUND:** Subchapter G of Insurance Code, ch. 26, enacted in the 73rd Legislative session as HB 2055 by Martin, relates to the fair marketing of small employer health benefit plans. Sec. 26.73 requires small employer carriers to pay the same commission, percentage of premium, or other amount to an agent for renewal of a small employer health benefit plan as paid for the original placement of the plan, except for cost of living adjustments. It also prohibits small employer carriers from terminating or failing to renew contracts with an agent for reasons related to the health status or claims experience of a small employer group.  
The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) also protects health insurance coverage for small group employers.
- DIGEST:** HB 471 would add to Insurance Code, art. 26.73, subsections (c) and (d) to prohibit a small employer carrier from varying the level of agent commissions based on the size of the insured group or otherwise reducing access to small employer health benefit plans.  
A small employer carrier could not implement agent commission schedules that varied the level of agent commissions based on the size of the group or otherwise reduced access to small employer health benefit plans.

Notwithstanding this provision, the bill would authorize a small employer carrier to:

- ! vary agent commission amounts or percentages based on group size if the variation were inversely related to the size of the group;
- ! vary agent commission amounts or percentages based on the cumulative premium paid by a single employer over a specific period if the variation was inversely related to the cumulative premium paid during the period; or
- ! pay agent commissions as a percentage of premium charged to a small employer if the commission percentage were based on all premiums paid by the small employer.

The bill would take effect September 1, 2001, and only would apply to a small employer health benefit plan that was delivered or issued for delivery on or after January 1, 2002.

**SUPPORTERS  
SAY:**

HB 471 would deal with the increasing problem of small employers locating and securing health insurance for their employees. Some small employer carriers use agent commission schedules to discourage agents from selling insurance to very small groups, generally five or fewer employees. These practices are in violation of federal law under HIPAA and conflict with the spirit of current state law. Examples of unacceptable commissions include commission schedules that pay a smaller amount for sales to groups with fewer employees and reduced or even no commissions for sales to high risk groups. HB 471 would close possible loopholes or inconsistencies in current law and prohibit discriminatory commission levels based on the size of the group.

Insurers manipulate agent commissions as a way of deliberately withholding coverage to small employers, who have actuarially higher risks. A commissioner's bulletin issued by the Texas Department of Insurance in June 1998 considers these practices in violation of federal and state law. While small employer carriers acknowledge this, they have managed to avoid provisions of current law by altering agents' commissions to further questionable practices. This hurts not only employers and employees of small businesses, but also underwriting agents who would like to write the coverage.

Enactment of HB 471 would help provide an environment in which agents had a reasonable incentive to continue developing health insurance coverage with the state's smallest employers. The bill would be one more step in reducing the high number of Texas' uninsured citizens. Insurers could no longer manipulate agents' commissions as a means of avoiding coverage of small employers.

**OPPONENTS  
SAY:**

While some insurers may have manipulated agent commissions in the past, such practices no longer are the case. No specific evidence exists as to attempts by small employer carriers to manipulate agents' commissions in order not to write insurance.