

SUBJECT: Health benefit coverage for treatment for certain brain injuries

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, T. Smith, Taylor, Eiland, Hancock, Martinez, Vo
0 nays
2 absent — Thompson, Woolley

WITNESSES: For — Jane Boutte, Pate Rehabilitation; Joanne McGee, Texas Traumatic Brain Injury Advisory Council; Douglas Reitmeyer; Douglas E. Williams; (*Registered, but did not testify:* Eric Makowski, Brain Injury Association of Texas and Core Healthcare; Sarah Mills, Advocacy, Inc.; Debbie Davis Mincher, Texas Occupational Therapy Association; Debbie Reitmeyer)

Against — Will Davis, Texas Association of Life and Health Insurers; Shelton Green, Texas Association of Business; Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify:* Lee Manross, Texas Association of Health Underwriters; Terry David Roberts, Texas Employment Law Council; Stacy Sass, Texas Small Business Alliance in Austin)

On — Dianne Longley, Texas Department of Insurance; Mary Katherine Stout, Texas Public Policy Foundation; Jared Wolfe, Texas Association of Health Plans

BACKGROUND: In 2001, the 77th Legislature enacted HB 1676 by Burnam, which requires that insurance companies not exclude acquired brain injuries from their health insurance benefits. Before enactment of HB 1676, insurers and HMOs offered varying coverage for rehabilitative therapies related to acquired brain injuries. HB 1676 directed the Sunset Advisory Commission to conduct a study regarding the extent to which enrollees used the health benefit coverage mandated under the bill and the impact of the required coverage on the cost of health benefit plans and to report its findings to the Legislature on or before January 1, 2007.

DIGEST:

CSHB 1919 would expand applicability of required coverage for acquired brain injuries to include state employees and risk pools, as well as extend the required coverage. The bill would specify requirements for notice regarding available coverage and for determination of medical necessity. Also, the bill would list the acceptable facilities for treatment of an acquired brain injury. The bill would require the commissioner of insurance to provide specified information related to coverage for an acquired brain injury and would authorize the commissioner to adopt rules as necessary.

Applicability. CSHB 1919 would apply the required coverage for acquired brain injuries to state employees through the Texas Employees Group Benefit Act, the Texas Public School Employee Group Benefit Program, and Texas School Employees Uniform Group Health Coverage. The bill also would apply the mandate to health and accident coverage provided by a risk pool created by Local Government Code, ch. 172.

Required coverage. CSHB 1919 would require that a health benefit plan include coverage for post-acute transition services, community reintegration services, including outpatient day treatment services, or other post-acute care treatment services necessary as a result of an acquired brain injury.

A health benefit plan could not include, in any lifetime limitation on the number of days of acute care treatment covered under the plan, any post-acute care treatment. Any limitation on days of post-acute care treatment would have to be stated separately. Also, a health benefit plan would have to include the same payment limitations, deductibles, co-payments, and coinsurance factors for required coverage as applicable to similar coverage provided under the health benefit plan.

To ensure that appropriate post-acute care treatment was provided, the bill would require that a health benefit plan include coverage for reasonable expenses related to periodic reevaluation of the care of a covered individual who:

- had incurred an acquired brain injury;
- had been unresponsive to treatment; and
- became responsive to treatment at a later date.

A determination of whether expenses were reasonable could consider factors including:

- cost;
- the time that had expired since the previous evaluation;
- any difference in the expertise of the physician or practitioner performing the evaluation;
- changes in technology; and
- advances in medicine.

Notice. A health benefit plan issuer would have to notify each insured or enrollee in writing about available coverage. The commissioner, in consultation with the Texas Traumatic Brain Injury Advisory Council, would prescribe by rule the specific contents and wording of the required notice.

The required notice would include a description of the specific benefits and would have to contain a statement that the fact that an acquired brain injury did not result in hospitalization or receipt of a specific treatment or service would not affect the right of the insured or enrollee to receive benefits commensurate with the condition. Notice also would have to include a statement that benefits could be provided in a specified treatment facility. Notice would have to be provide not later than 10 days after the date on which the health benefit plan issuer received a claim for coverage reasonably indicating that the insured or enrollee had incurred an acquired brain injury.

Determination of medical necessity. A health benefit plan would respond to a person requesting utilization review or appealing for an extension of coverage based on an allegation of medical necessity not later than three business days after the date on which the person made the request or submitted the appeal. The person would have to make the request or submit the appeal as prescribed by the terms of the plan's health insurance policy or similar coverage document. To comply, the health benefit plan issuer would have to respond with direct telephone contact by one of its representatives. A physician or other health care practitioner who determined the medical necessity related to a service for an acquired brain injury would have to be licensed to practice in Texas.

Treatment facilities. A health benefit plan could not deny coverage solely on the fact that the treatment or services were provided at a facility

other than a hospital. Treatment for an acquired brain injury could be provided at an appropriate facility including:

- a hospital, including an acute rehabilitation hospital;
- a regulated assisted living facility;
- a regulated nursing home;
- a community home;
- an acute or post-acute rehabilitation facility, including a residential outpatient facility; or
- a medical office.

Consumer information. The commissioner would prepare information for use by consumers, purchasers of health benefit plan coverage, and self-insurers regarding coverage recommended for acquired brain injuries. The Texas Department of Insurance (TDI) would publish the information on its Website.

The commissioner also would adopt rules as necessary to implement these provisions, including, in consultation with the Texas Traumatic Brain Injury Advisory Council, the basic requirements for training personnel responsible for preauthorization or utilization review.

The bill would take effect September 1, 2007, and would apply only to a health benefit plan issued or renewed on or after January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 1919 would retain mandated health benefits for acquired brain injury, including post-acute care and cognitive rehabilitation, but would add notice requirements regarding specific coverage. The bill would extend coverage for outpatient day treatment services, which would be less costly than inpatient services, in order to promote cognitive rehabilitation and other neurological therapies. The Sunset Advisory Commission's "Study of Health Benefit Plan Coverage for Brain Injuries," dated November 2006 and directed by HB 1676 in 2001, found that claims costs associated with acquired brain injury benefits are quite small – less than .20 of one percent of total claims paid by insurers in 2005. Advances in the treatment of these brain injuries, particularly brain plasticity or neuroplasticity, enable significantly more patients with acquired brain injuries to become cognitively and socially functional. We should not allow young adults to end up for life in nursing homes when they have the ability through medical technology to have a better quality of life. Failure to pass CSHB 1919 ultimately could place cost burdens back on the state.

OPPONENTS
SAY:

The Legislature should steer away from state-mandated health benefits as found in CSHB 1919. In 2003, the 78th Legislature (SB 541 by Williams) created health benefit plan options that do not have to provide all state-mandated health benefits but may exclude or reduce coverage for specific benefits designated by the Legislature, re-codified in the new Insurance Code, ch. 1507. The Legislature would do well to prioritize health benefit plans with choices for purchasers, rather than state-mandated health benefits. In addition, once mandated benefits make their way into statutes, they never seem to be repealed but tend to be expanded, as CSHB 1919 would do for benefits related to acquired brain injuries.