SUBJECT: Standards for physician ranking systems used by health benefit providers

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Martinez Fischer, Eiland, Hancock, Hunter, Isett, Taylor

0 nays

2 absent — Deshotel, Thompson

WITNESSES: For — (*Registered, but did not testify*: Lee Manross, Texas Association of Health Underwriters; David Marwitz, Texas Dermatalogical Society)

Against — (*Registered, but did not testify*: Kandice Sanaie, Texas Association of Business)

On — Deborah Hujar, Legislative Budget Board; Josie R. Williams, Texas Medical Association; Jared Wolfe, Texas Association of Health Providers

BACKGROUND: The National Quality Forum (NQF) and the AQA Alliance (AQA) are nationally recognized health organizations that measure and report on physician performance.

42 U.S.C. sec. 11112 establishes federal standards for professional review actions of physicians by health care entities. The statute provides due process procedures for physicians, including the right to a professional review hearing after adequate notice before a panel of individuals who are appointed by the entity and are not in direct economic competition with the doctor.

DIGEST: HB 1888 would establish standards regarding physician ranking systems used by health benefit providers, including insurance companies and health maintenance organizations (HMOs).

The bill would require that, in order to rank or tier physicians based upon performance and publish information comparing a physician against standards, measures, or other physicians, a health benefits provider would have to:

- use measures conforming to nationally recognized standards as prescribed by the Texas Department of Insurance (TDI) commissioner;
- disclose, to each affected physician, the standards and measurements to be used by the health benefit plan issuer before any evaluation period begins; and
- afford an opportunity for each affected physician to dispute the ranking through a system including due process protections conforming to 42 U.S.C. sec. 11112.

The commissioner would consider guidelines and performance measures emphasizing quality of health care established by nationally recognized health care organizations, such as the National Quality Forum (NQF), the AQA Alliance, or other similar national organizations.

HB 1888 would require health benefit plan issuers to comply with the requirements of the bill by January 1, 2010.

The bill would take effect September 1, 2009.

SUPPORTERS SAY:

HB 1888 would require the TDI commissioner to adopt rules based on national standards. Recently, national standards for physician ranking systems have been proposed and received favorably by health insurers as well as physician groups. These performance measures would help ensure fairness, consistency, and efficiency of physician ranking systems by ensuring the rankings are fair to doctors and clear to consumers. All physician ranking systems used by health benefit providers in Texas would conform to these well-designed consensus measures, providing greatly needed nationwide standards rather than individual company criteria.

In addition, the bill would require that doctors be notified in advance of the methodology an insurer would use to rank them and would mandate federally adopted due process requirements for review hearings. The review panel members would not necessarily be of the same or related specialty as the affected doctor, but the hearings would be before panels made up of qualified individuals with no economic incentive to influence them.

HB 1888 would protect doctors from unfair ranking practices while enhancing consumer access to accurate and reliable information on physician quality.

OPPONENTS SAY:

HB 1888 would not go far enough in specifying the ranking standards to be used. The 2009 Legislative Budget Board (LBB) Effectiveness and Efficiency Report recommended that the Texas Insurance Code be amended to require all insurers who choose to rank doctors adhere to the standards detailed in the Consumer-Purchaser Disclosure Project (CPDP) Patient Charter, a consumer-based, balanced program agreed to by all involved stakeholders. The Patient Charter has been endorsed by the American Medical Association (AMA), insurance groups, employers, AARP, AFL-CIO, and business organizations.

The bill remains vague and would leave to the discretion of the insurance commissioner standards recommended by any nationally recognized health care organization, including the NQF, AQA, or similar national organizations recognized by the commissioner. The "any similar" language would allow the commissioner to choose, for example, the National Committee of Quality Assurance (NCQA) for ranking standards; NCQA is preferred by health plans and insurers because it was designed to evaluate the performance of large groups — large health plans or groups of physicians working in the same area. However, NCQA standards are not appropriate for evaluating individual doctors and would provide inaccurate results.

HB 1888 lacks clarity in the area of due process. The bill would provide for dispute of a ranking by a physician, but is silent on when the dispute would occur. It is imperative that the opportunity to dispute a ranking occur before the ranking is published so that the doctor would have an opportunity to verify the accuracy of the data used, thus enabling the insurer to make necessary corrections before erroneous and damaging information was published. Should the review hearing not resolve the issue, the health plan at least should be required to display a symbol indicating that the physician disagreed with or disputed the finding.

The bill does not specify how the due process provisions would work. Rather than laying out due process standards that Texas law would apply in these situations, the bill would rely on a federal law provision that could change. In addition, this federal law, 42 U.S.C. sec. 11112, is not without issue. The system places the burden of proof on the physician, and the

panel is immune from any error that could damage or destroy a doctor's practice. Also, the panel, under 42 U.S.C. sec. 11112, consists simply of "individuals." A panel reviewing quality of clinical care should not be made up of just any individual, but should include at least two or three doctors in the same area of specialty as the physician before the panel. It would be difficult, for example, for a dermatologist to review accurately the quality of clinical care provided by a neurosurgeon.

NOTES:

Related bills, HB 1392 by Leibowitz and HB 4289 by Hunter, would require that physicians have the opportunity to verify data used as the basis of a ranking and to dispute the ranking before the ranking is published. The bills would provide specific due-process procedures for physician measurement review hearings in Texas, including that review panels be comprised of three physicians who practice the same or a similar medical specialty as the affected physician.

Rep. Davis intends to offer an amendment that would specify, in order, which national standards the insurance commissioner would consider when establishing a physician ranking system for Texas. The commissioner first would have to look to the NQF for recommendations regarding standards and guidelines. Should the NQF have no recommendations available, the commissioner next would have to look to the AQA, followed by the NCQA. If none of these organizations had established guidelines, the commissioner then could look to other similar national organizations.

The author's amendment also would specify that a physician would have the opportunity to dispute a ranking before publication or public dissemination.

The amendment also would add three new sections to the Insurance Code. One would prohibit doctors from requiring or requesting patients to agree not to rank or otherwise evaluate the physician; another would require health benefit plan issuers to retain a nationally recognized health care quality standard-setting organization to review the plan issuer's physician ranking system. The final new section would exempt certain Medicaid-related care programs and the CHIP program from the requirements of the bill.