SUBJECT: Medicaid newborn enrollment procedures and expression of intent

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Hopson, S. King, Laubenberg, McReynolds, Truitt, Zerwas

0 nays

1 absent — Gonzales

WITNESSES: For — None

Against — None

On — Steve Aragon, Health and Human Services Commission

BACKGROUND: In 1999, the 76th Legislature enacted HB 2896 by Coleman and HB 2641 by Gray. The two bills added identical provisions — subdivisions (4), (5), and (6) — to Government Code, sec. 533.0075, requiring the Health and Human Services Commission to:

> (4) develop and implement an expedited process for determining eligibility for and enrolling pregnant women and newborn infants in managed care plans;
> (5) ensure immediate access to prenatal services and newborn care for pregnant women and newborn infants enrolled in managed care plans, including ensuring that a pregnant woman may obtain an appointment with an obstetrical care provider for an initial maternity evaluation not later than the 30th day after the date the woman applies for Medicaid; and
> (6) temporarily assign Medicaid-eligible newborn infants to the traditional fee-for-service component of the state Medicaid program for a period not to exceed the earlier of 60 days or the date on which the Texas Department of Human Services has completed the newborn's Medicaid eligibility determination, including assignment of the newborn's Medicaid eligibility number.

DIGEST:

CSHB 3231 would delete Government Code, sec. 533.0075(6), which requires HHSC temporarily to assign certain Medicaid-eligible newborn infants to the traditional fee-for-service Medicaid program.

CSHB 3231 would cite the bills from 1999 that added subdivisions (4), (5), and (6) to Government Code, sec. 533.0075 and the content of these subdivisions.

The bill would state that when these subdivisions were enacted, the Legislature understood that the Health and Human Services Commission (HHSC) had enrolled newborns in Medicaid managed care plans and intended that the commission would continue to enroll newborns in Medicaid managed care plans.

CSHB 3231 would state that Government Code, sec. 533.0075(6) was intended to address delays in payment to health care providers in Medicaid managed care areas for services provided to a newborn who ultimately was enrolled in Medicaid but whose Medicaid eligibility was not determined at the time of birth. The bill also would state that subdivision (6) was not intended to supersede subdivisions (4) and (5) or to prohibit enrollment of newborns in a Medicaid managed care plan. Subdivision (6) was intended instead to ensure that a newborn whose Medicaid eligibility was not known or determined at birth would receive medically necessary care.

The bill would state that the Legislature understands that the delays in payment that prompted the enactment of subdivision (6) have largely been resolved and that providers who supply services to newborns do not experience delays or denials of payment solely because of a delay in Medicaid eligibility determination and that subdivision (6) no longer is necessary for these purposes.

Governmental acts taken or decisions made by HHSC before the effective date of this bill to enroll newborns in managed care organizations would be conclusively presumed to be valid and to have occurred in accordance with all applicable law. This presumption would not apply to an act or decision that:

- was void at the time the act or decision occurred;
- violated the terms of federal law or a federal waiver; or
- was a misdemeanor under Texas or U.S. law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

HB 3231 would clarify the intent of the Legislature in enacting statutes in 1999 that addressed the enrollment of newborns in traditional fee-for-service Medicaid. This clarification could avoid future misinterpretations of the statute that could lead Medicaid managed care providers to request reimbursement from Texas dating back to 1999 for services provided to newborns 60 days old or less. Texas pays $48 million per month for Medicaid coverage for infants in managed care and a large portion of these payments are attributable to newborns 60 days old or less.

In *Hawkins v. El Paso First Health Plans, Inc.* (214 S.W.3d 709), the Third Court of Appeals in Austin heard a case on appeal that alleged HHSC retroactively should disenroll certain newborns from certain Medicaid managed care plans, which effectively would make HHSC responsible for the managed care plans' costs of care for these children. In its findings, the court cited Government Code, sec. 533.0075(6) as a reason HHSC should not have enrolled the newborns in a managed care plan. This is a misinterpretation of the intent of Government Code, sec. 533.0075(6). This subdivision only was intended to ensure that providers who performed health care services for newborns for whom Medicaid eligibility had not been established could be paid for the services they provided to these newborns before the child was enrolled in managed care.

HHSC automatically enrolls newborns in the same plan in which the child's mother is enrolled. This is a longstanding practice supported by federal law. The clarifications in HB 3231 and the deletion of Government Code, sec. 533.0075(6) would prevent future parties from mistakenly alleging that HHSC should reimburse other managed care providers for newborn care when HHSC appropriately had enrolled newborns in managed care based on their mothers' enrollment.

The states cannot require SSI-eligible newborns to be enrolled in managed care. Underweight newborns automatically are SSI-eligible. Because it takes the federal government some time after birth to establish SSI eligibility for a newborn, HHSC enrolled underweight newborns in managed care until the federal government confirmed SSI eligibility. The *Hawkins v. El Paso First Health Plans, Inc.* case alleged HHSC immediately should have enrolled underweight newborns, who are costly

to treat, in Medicaid fee for service, rather than managed care. The managed care plans that filed suit did not feel they should be responsible for the cost of care of underweight newborns. The Legislature would not be addressing the breaches of contract alleged in *Hawkins v. El Paso First Health Plans, Inc*., so the bill would not represent an attempt by the Legislature to interfere with the Texas Supreme Court's potential ruling on the appeal of that case.

OPPONENTS SAY:

HB 3231 would represent an inappropriate legislative attempt to influence a future Texas Supreme Court decision. The Third Court of Appeals finding in *Hawkins v. El Paso First Health Plans, Inc.* was based in part on the court's interpretation of Government Code, sec. 533.0075(6). This bill would state legislative intent that would conflict with the Third Court of Appeals interpretation of that statute and inappropriately could influence the Supreme Court's ruling on the appeal of *Hawkins v. El Paso First Health Plans, Inc.*

NOTES:

The committee substitute differs from the bill as filed by specifying that the conclusive presumption of validity of a governmental act or decision by HHSC to enroll a newborn in a managed care organization would apply only to acts and decisions made before the effective date of the bill.