HOUSE
RESEARCH
ORGANIZATION bill analysis 5/6/2011

HB 1776
Lozano, Hancock
(CSHB 1776 by Smithee)

SUBJECT: Prohibiting fee limits in contracts between dentists and HMOs or insurers

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Eiland, Hancock, Nash, Sheets, L. Taylor, Torres, Vo, Walle

0 nays

WITNESSES: For — David Duncan, Texas Dental Association; (*Registered, but did not testify:* Paul Kennedy, III, Texas Academy of Pediatric Dentistry; David Mintz, Texas Academy of General Dentistry; Jim Rudd, Texas Association of Oral and Maxillofacial Surgeons)

Against — Kandice Sanaie, Texas Association of Business; (*Registered, but did not testify:* Blake Hutson, Consumers Union)

On — Jennifer Cawley, Texas Association of Life and Health Insurers; Jared Wolfe, Texas Association of Health Plans; (*Registered, but did not testify:* Douglas Danzeiser, Texas Department of Insurance)

DIGEST: CSHB 1776 would amend health maintenance organization (HMO) and accident and health insurance law to prohibit contracts between health plans and dentists from limiting the fee a dentist could charge for dental services that were not covered by the health plan.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: CSHB 1776 is needed to stop health plans from requiring dentists, as a condition of signing plan contracts, to also agree to discount fees for non-covered services to the plan's enrollees. A sole dentist or dental group has no negotiating power with insurers, and because of antitrust restrictions that prevent health care providers from banding together, a government solution is needed. Also, in areas of the state where a large employer dominates, a dentist has no choice but to sign a contract to serve patients.

Historically, when a contracting dentist treats a patient for procedures that are not covered by the plan, the dentist can bill the patient at the usual and customary fee. Insurance companies around the country now are trying to

set limits on what dentists may charge for non-covered services and telling their enrollees that they get an added benefit in the form of discounted fees for non-covered services, such as teeth whitening.

This trend in fee discounts on non-covered services is unfairly requiring dentists to cut their rates so that insurers can offer a more comprehensive benefit at a low cost. If insurers or employers want to offer these non-covered services, they should do so within the plan's benefits as covered services.

This practice not only is unfair to dentists, but also to consumers, since it means dentists will have to cost-shift the lost revenue onto their other patients, many of whom will not have dental insurance. The relationship between dentists and their patients is a personal one, and dentists do not want to refer, and patients do not want to be referred away, for services the dentist could normally provide. Just as other small business owners do, dentists may offer a discounted rate on a case-by-case basis to their patients.

The committee substitute reflects a compromise between organized dentistry and insurance and uses model language adopted by the National Conference of Insurance Legislators (NCOIL). The substitute would only prohibit limiting fees for services that were not covered by the policy, rather than prohibiting limits on fees for services that were covered but maxed out.

OPPONENTS SAY:

This bill would infringe upon insurers' ability to create plans and benefits that were wanted by consumers. The Texas Legislature should not be involved in directing contractual terms. Dentists are free to negotiate the terms of their contracts and ultimately do not have to join networks if they cannot reach agreement. Dentists also are free to refer the patients elsewhere for non-covered services, and nothing requires them to cost-shift any lost revenue onto other patients.

Discount rate requirements also should be allowed because employers are trying to keep premiums low. Asking discounts from dentists who reap the benefit of a new stream of patients is a fair trade-off. Also, if this bill were enacted, employees would end up paying more for their dental care because they would lose discounted rates.

NOTES:

The committee substitute differs from the filed version in that it defines covered dental services and removed from contract requirements the prohibition from limiting fees for services that exceed the annual or lifetime maximum limit or that are provided during a waiting period.

The companion bill, SB 554 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 14 and was referred to the House Insurance Committee on April 26.