

- SUBJECT:** Prohibiting discretionary clauses in certain insurance documents
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 9 ayes — Smithee, Eiland, Hancock, Nash, Sheets, L. Taylor, Torres, Vo, Walle  
0 nays
- WITNESSES:** For — Linnea Nasman, National Multiple Sclerosis Society, Lone Star; David Rankin; Deborah Rankin; (*Registered, but did not testify:* Michelle Apodaca, Texas Hospital Association; Trey Berndt, AARP; Patricia Kolodzey, Texas Medical Association; Stacey Pogue, Center for Public Policy Priorities; Gyl Switzer, Mental Health America of Texas; Ware Wendall, Texas Watch)  
Against — None  
On — (*Registered, but did not testify:* Deeya Beck, Office of Public Insurance Counsel; Doug Danzeiser, Texas Department of Insurance)
- BACKGROUND:** In December 2010, Texas Department of Insurance rules took effect that prohibited the use of discretionary clauses in life, annuity, health maintenance organization (HMO), and other health insurance forms.  
Several states already prohibit the use of discretionary clauses, which instruct courts to presume as correct the insurer's determination about whether a benefit is payable or covered, even if evidence favors the insured.
- DIGEST:** HB 3017 would prohibit life, annuity, HMO, and other health plans from including discretionary clauses in their evidence of coverage statements or policy and contract documents.  
The bill would define as a discretionary clause any provision that:
- served to bind the enrollee or claimant to adverse eligibility or benefit or claims decisions by the insurer, including decisions made in response to a claim appeal;

- specified that enrollees or claimants could not contest or appeal a claim or benefit denial; or
- specified a standard of review for claims appeals that deferred to the original decision or used interpretations that were inconsistent with state 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, 2011.