

SUBJECT: Removing intoxication exclusions in accident and health insurance policies

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner

0 nays

2 absent — Creighton, Sheets

WITNESSES: For — Jennifer Gilley, Texas Association of Substance Abuse Program; (*Registered, but did not testify*: Charles Bailey, Texas Hospital Association)

Against — (*Registered, but did not testify*: Brenda Nation, American Council of Life insurers)

On — (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 1201.227 states that an individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision: “Intoxicants and Narcotics: The insurer is not liable for any loss sustained or contracted in consequence of the insured’s being intoxicated or under the influence of any narcotic unless the narcotic is administered on the advice of a physician.”

DIGEST: CSHB 3105 would repeal Insurance Code, sec. 1201.227.

The change required by the bill would apply only to an individual accident and health insurance policy that was delivered, issued for delivery, or renewed on or after January 1, 2014.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 3105 would benefit both the public and health care providers.

Current law, by providing an accident and health insurance exclusion related to the use of drugs or alcohol, keeps individuals who are intoxicated from seeking treatment for medical conditions.

The intoxicants and narcotics exclusions were developed 66 years ago as part of national model legislation. At that time, policy makers and the scientific community did not have an advanced understanding of substance abuse and treatment. The same group that initially developed the recommended exclusion, the National Association of Insurance Commissioners, reversed its recommendation in 2001 and recommends that the exclusion be abolished. Fifteen states, including California, Colorado, and Ohio, have abolished the exclusion.

Health care providers who treat these individuals often do not get reimbursed for treatment by insurance because of the intoxication exclusion. Health care providers also may not document intoxication-related disorders or illnesses in medical records as a way of protecting their desire to get reimbursed for services provided and protecting patients who should not be stigmatized because of a chemical dependency issue.

CSHB 3105 would encourage emergency room physicians to perform drug and alcohol testing and follow up on those tests with screening, brief intervention and referral to treatment protocols (SBIRT). A study by University of Texas Southwestern Medical Center found that patients were 48 percent less likely to be readmitted to the hospital when a physician used the SBIRT methods. One six-month study of SBIRT in six states showed a 68 percent reduction in illicit drug use, a 39 percent reduction in heavy alcohol use, and fewer reported arrests.

The bill would remove a barrier between physician and patients. If the exclusion for intoxicants and narcotics were removed, the bill could result in a more open dialogue between emergency room physicians and patients. Doctors could freely talk to the patient about drug and alcohol abuse and steer them toward substance abuse treatments. Encouraging individuals to seek and undergo treatments would serve a larger public health interest by reducing the number of intoxicated individuals and the damage they cause to others' lives and property.

**OPPONENTS
SAY:**

CSHB 3105, as written, contains policy implications that could be unclear with respect to whether the bill would result in a repeal of the intoxicants and narcotics exemption in insurance policies or merely repeal the

required notice of the intoxicants and narcotics exemption in policies.

The first interpretation holds that CSHB 3105 would effectively create a mandate because it would remove the intoxication and narcotics exclusion in individual health plans. This would result in an increase in the cost of health insurance in Texas because accident and health insurance companies would be forced to pay for services for individuals who engaged in irresponsible behavior. Insurance companies' costs would increase, and the companies would pass those costs on to consumers in the form of higher premiums. Mandates drive up prices, push out competition, and leave unaffordable policies that reflect policymaker desires, rather than consumer interest.

Another interpretation is that the insurers could continue not to be held liable for losses resulting from intoxicated policyholders. Companies simply would no longer be required to include the exemption provision language that Texas currently requires in policies.

**OTHER
OPPONENTS
SAY:**

As written, CSHB 3105 would include disability income insurance. Disability income insurance is included in the accident and health insurance definition of the Insurance Code. The bill should be modified to remove disability income insurance from its provisions. Otherwise, insurance rates for disability income insurance could rise substantially.