

SUBJECT: Modifying dentist overpayment recovery, third party access to networks

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul,
Romero, Sanford

0 nays

WITNESSES: For — Carl Galant, Texas Dental Association; (*Registered, but did not testify*: Amy Bresnen, Association of Dental Support Organizations; Allen Erenbaum, Careington International Corporation; Joe Garcia, Delta Dental Insurance; David Mintz, Texas Academy of General Dentistry; Amber Hausenfluck, Texas Academy of Pediatric Dentistry; Carrie Simmons, Texas Association of Orthodontists; Bruce Scott, Texas Society of Oral and Maxillofacial Surgeons)

Against — None

On — (*Registered, but did not testify*: Jenny Blakey, Office of Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance)

BACKGROUND: Some have suggested there is a lack of clarity in current law about the recovery of insurance overpayments to dentists and access to certain provider network contracts by third parties.

DIGEST: CSHB 1934 would specify certain requirements for the recovery of an overpayment made to a dentist by an employee benefit plan or health insurance policy provider or issuer. The bill also would include provisions related to third-party access to provider networks under certain contracts.

Recovery of overpayment. An employee benefit plan or health insurance policy provider or issuer could not recover an overpayment made to a dentist unless, by the 180th day after the dentist received the payment, the provider or issuer provided written notice of the overpayment to the dentist that included the basis and specific reasons for the request for

recovery of funds and the dentist:

- failed to provide a written objection to the request for recovery of funds and did not make arrangements for repayment of the request funds on or before the 45th day after receiving the notice; or
- objected to the request in accordance with the specified procedure and exhausted all rights of appeal.

An employee benefit plan or health insurance policy provider or issuer would have to provide a dentist with the opportunity to challenge an overpayment recovery request and establish written policies and procedures for a dentist to object to an overpayment recovery request. The procedures would have to allow the dentist to access the claims information in dispute.

Provider networks. At the time a provider network contract was entered into or when material modifications were made to the contract relevant to granting a third party access to the contract, an employee benefit plan or health insurance policy provider or issuer would have to allow any dentist that was part of the provider network to elect to not participate in the third party access to the contract or enter in to a contract directly with the third party that would obtain access to the provider network.

A plan or policy provider or issuer could not cancel or otherwise end a contractual relationship with a dentist under these provisions if the dentist elected not to participate in or agree to third party access to the provider network contract.

A provider or issuer that entered into a provider network contract with a dentist or certain contracting entities could grant a third party access to the contract or to a dentist's dental care services or contractual discounts provided under the control only if:

- the contract or each employee benefit plan or health insurance policy for which the contract was entered into, leased, or acquired conspicuously authorized an agreement with a third party;

- the plan or policy conspicuously states that the dentist could elect not to participate in third party access to the contract, if applicable;
- the third party accessing the contract agreed to comply with all of the original contract's terms;
- a third party's right to a dentist's discounted rate ceased as of the termination date of the contract; and
- the provider, issuer, or other contracting entity performed certain actions specified in the bill.

Certain criteria would not apply to a contracting entity that only organized and leased networks but did not engage in the business of insurance.

A person could not bind or require a dentist to perform dental care services under a provider network contract that had been sold, leased, or assigned to a third party or for which a third party had otherwise obtained provider network access in violation of the bill's provisions.

The bill's provisions relating to third party access to provider networks would not apply if access to provider network contract was granted to certain third party and affiliates, the child health plan program or the health benefits plan for certain children, or a Medicaid managed care program or certain Medicaid programs.

Applicability. The bill's provisions would apply only to:

- an employee benefit plan for a plan year that commenced on or after January 1, 2022;
- a health insurance policy delivered, issued for delivery, or renewed on after that date; and
- any provider network contract entered into on or after the bill's effective date in connection with one of those plans and policies.

The bill would take effect September 1, 2021.