

**SUBJECT:** Prohibiting favored nation clause, restrictions on direct physician payment

**COMMITTEE:** Insurance — committee substitute recommended

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

0 nays

**WITNESSES:** For — David Balat, Texas Public Policy Foundation; (*Registered, but did not testify*: Blake Hutson, AARP Texas; Stacey Pogue, Every Texan; Carl Isett, TABBA; Jamie Dudensing, Texas Association of Health Plans; Kaden Norton, Texas Chiropractic Association)

Against — None

On — Cameron Duncan, Texas Hospital Association; (*Registered, but did not testify*: Jenny Blakey, Office of Public Insurance Counsel; Kenisha Schuster, Texas Department of Insurance)

**BACKGROUND:** Concerns have been raised over anti-competitive practices in the health care market, including most favored nation clauses, in which insurance companies and large providers attempt to keep competitors from negotiating rates, and insurance contracts that prohibit providers from accepting direct payment from patients who have health insurance, even if it would be less expensive for the patient. Some have recommended prohibiting these practices.

**DIGEST:** CSHB 4051 would prohibit the restriction of a physician or health care provider from accepting direct payments from an enrollee in lieu of making a claim to their health benefit plan. The bill also would prohibit the use of favored nation clauses in provider contracts.

**Direct payment of physician or health care provider.** A physician or health care provider could not be prohibited from accepting directly from an enrollee full payment for a health care service in lieu of submitting a

claim to the enrollee's health benefit plan.

Notwithstanding any law, the charge for a health care service for which a physician or health care provider accepted such a payment or from a patient without a health benefit plan could not exceed the lowest contract rate for the health care service allowable under any health benefit plan with respect to which the physician or health care provider was a contracted, preferred, or participating provider.

This provision would apply to:

- a health benefit plan;
- a basic coverage plan under the Texas Employees Group Benefits Act;
- a basic plan under the Texas Public School Retired Employees Group Benefits Act;
- a primary care coverage plan under the Texas School Employees Uniform Group Health Coverage Act; and
- a plan providing basic coverage under the State University Employees Uniform Insurance Benefits Act.

A "health benefit plan" would mean an individual, group, blanket, or franchise insurance policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization, that provided benefits for health care services.

**Favored nation clauses prohibited.** The bill would prohibit an entity contracting with a provider for the delivery of health care services from:

- offering a contract that included a most favored nation clause;
- entering into a contract that included such a clause; or
- amending or renewing an existing contract so that the contract added or retained such a clause.

The bill would specify the provisions in a provider network contract that would be considered a "most favored nation clause."

The bill would take effect September 1, 2021.