



New Texas Legislation Helps “Stretch” The Concepts of Narrow Networks

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In the past five years or so an increasing number of health insurers have been using “narrow networks” of providers in an attempt to hold down medical costs and insurance premium rates. A key part of the narrow network strategy is to deter use of out-of-network providers, steering patients instead to a comparatively small network of providers where the cost, and possibly the quality, of care can be more closely managed. One method insurers have used to limit out-of-network use has been to terminate, or otherwise penalize, providers whose patients record high out-of-network use.

The Texas Legislature recently adopted legislation to restore some measure of choice for patients enrolled in narrow networks by outlawing a number of tactics preferred provider networks and health maintenance organizations may use to discourage out-of-network use. Texas House Bill 547 enacted a package of amendments to the Texas Insurance Code that safeguard patients’ out-of-network benefits in a variety of ways. Under the new legislation, insurers may not terminate, or threaten to terminate, a patient’s participation in a preferred provider plan solely because the patient uses an out-of-network provider. The new law also prohibits insurers from terminating a preferred provider’s contract solely because that provider’s patients use out-of-network providers.

The legislation also protects a preferred provider’s ability to inform patients about their out-of-network provider choices. The law declares that insurers may not in any way prohibit, attempt to prohibit, penalize or otherwise restrict a preferred provider from communicating with an insured patient about the availability of out-of-network services under the insurance plan, although the insurer may require certain disclosures about additional patient costs and potential conflicts of interest in connection with the out-of-network referral. Moreover, Texas insurers may no longer require, as a condition of provider payment, that out-of-network providers give their patients a notification form identifying the provider as out-of-network if the form’s content, or the notification process itself, is intended to intimidate the patient. Similar provisions in the legislation apply to health maintenance organizations as well.

This new law, which took effect on September 1, 2015, does not apply to Medicaid or child health insurance programs. Still, it offers a bold and intriguing legislative counterpoint to health

insurers’ growing use of narrow provider networks as well as business practices that may operate to confine patient choice to in-network providers. If Texas House Bill 547 can start to pry open narrow networks in Texas, it may not be long before other states such as California consider adopting similar protections for their insured patients and health care providers.



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