

The Truth About House Bill 2016

Health Plans Claim: Government Should Not Intervene in Contractual Issues Between Physicians and Health Plans

Truth: In a perfect world, the state would not be involved with contract issues between physicians and health plans, but we don't live in a perfect world. The increased consolidation of the health insurance industry has created a health care market that is dominated by a few investor-driven managed care plans, which control a significant part of most physicians' practices. These health plans dictate ambiguous contract terms, and those terms impact every aspect of a physician's practice.

There are serious public policy ramifications when such disparity in bargaining power occurs between physicians, who take care of patients, and health plans, which are only accountable to their shareholders. Physicians have little choice but to sign whatever contract is offered by health plans. Most physician practices find it nearly impossible to sacrifice a significant part of their patient base to make a stand against untenable contract provisions the plans offer.

House Bill 2016 is a modest approach to ensuring managed care contracts are fair and transparent. It provides disclosure of certain uniform contract provisions, prohibits certain unfair contract provisions like unilateral contract changes, and will relieve some administrative pressure and costs.

Health Plans Claim: HB 2016 Shouldn't Apply to ERISA Plans

Truth: ERISA plans, or self-insured plans, comprise the majority of the Texas health insurance market. The health plans try to confuse what is a straightforward bill that provides for fairness and transparency in their contractual relationships with physicians by raising the all too familiar argument that ERISA preempts any state law that they don't like.

This, however, ignores settled ERISA law. Courts have clearly defined the scope of ERISA preemption, and case law laid out by the US Supreme Court and federal appeals courts informs us that a state has the authority, as well as the traditional role of regulating health care contracts. This bill falls squarely within the state's traditional regulatory power.

The US Supreme Court has said that the ERISA preemption is subject to "the starting presumption that Congress does not intend to supplant state law," and that "unless congressional intent to preempt clearly appears, ERISA will not be deemed to supplant state law in areas traditionally regulated by the states." Contract law is traditionally regulated by the states.

ERISA says to employers that if you self-insure, you can structure your benefit packages for your employees anyway you want to without state laws interfering with the design or administration of those plans. So states can't tell self-insured plans that they have to cover this service or that procedure. If House Bill 2016 is enacted into law, ERISA plans will remain free to design and administer their benefits as they wish.

In case after case, courts have held that state laws that have an indirect impact on ERISA plans do not trigger preemption. Moreover, courts have allowed physicians to assert state law contract claims against payers, finding that ERISA does not intend to govern those relationships. The courts reason that the physicians are not a "party to the ERISA bargain struck between plan and plan participants by Congress. Instead, these parties' relationships flow from and are governed by contracts." The same reasoning applies to the validity of HB 2016, since it focuses on the contracts between health plans and physicians, not on the terms or structures of an ERISA benefit plan.

Any effort by health plans to amend HB 2016 to provide an ERISA exemption is tantamount to saying the Texas Legislature does not have the right to legislate in the area of contract law between health plans and physicians.

The Health Plans Claim: HB 2016 Mandates Specific Contract Terms

Truth: There is nothing in the language of the bill that requires health plans to adopt specific or standardized contract language. Health plans are free to continue to execute individual, unique contracts with physicians and other health care professionals. All HB 2016 proposes is to require health plans to provide physicians with information they need to make an informed business decision, like payment terms.

Providing more transparency and accountability in managed care contracting will free the market to reward good health plans by making them compete for physicians on the basis of the quality of their contract terms.

Health Plans Claim: They Compete for Physicians' Services

Truth: This claim is patently false. In Texas today, a few very large investor-driven health plans dominate the health care market. This imbalance forces physicians to sign take-it-or-leave-it contracts that are not only bad for the physician, but can be detrimental to patient care. Texas' health care market is not an equal playing field

Those few health plans control a significant part of most physicians' practices, leaving physicians with little ability to walk away from unfair contracts. What incentive does a plan have to agree to any request from a physician, when the plan has the ability to remove that physician from their network for not agreeing to the terms of their contract and effectively denying that physician's patients access to his services?

The Health Plans Claim: HB 2016 Will Increase Costs

Truth: Same song, fourth verse. Every session we hear this same Chicken Little defense – anything the Legislature attempts to do on managed care reform will increase costs. Given the healthy profits the for-profit health plans have posted over the past several years, not to mention the mind-boggling compensation packages their senior executives have received, the questions must be asked, how will disclosing contract terms to physicians raise costs?

HB 2016 does not require health plans to re-write existing contracts and only requires health plans to comply with the disclosure requirements for contracts entered into or renewed on or after Jan. 1, 2008.

Health Plans Claim: Existing State Law Addresses the Provisions of HB 2016

Truth: Texas has been at the forefront of managed care reform and has strong, comprehensive statutes in place, which govern managed care practices. Unfortunately, state law and Texas Department of Insurance regulations apply only to a small portion of Texas' health insurance market, as self-insured ERISA plans are exempt from most state oversight. This patchwork of oversight creates confusion in the market by holding health plans to different standards.

HB 2016 applies consistent standards to all health plans and requires them to comply with existing state law, disclose certain uniform contract terms and prohibit unfair contracting provisions. Health plans should not be opposed to HB 2016 as it simply applies existing state law to all health plans.