

Texas benefit administrators make gains during recent legislative session

The Texas Legislature adjourned on May 28th after 140 tumultuous days. As the dust settles, it appears that Texas benefit administrators have won some hard fought battles and avoided others. Highlights follow, and details will be provided at TABA's Fall Conference.

Obtaining timely, useful loss experience from carriers should become easier under new law

HB 2015 by Smithee/Duncan was signed by the Governor on June 15th and will apply to requests for information made on or after January 1, 2008. TABA members, including Sam Francis, Robyn and Ed Jacobson, Gary Chapman and Kevin Chapman were instrumental in the writing and negotiation of this bill.

The new law has several important features:

1. It will enable an employer, private or public, to request claims information and receive the information within 30 days of making the request.
2. It will facilitate the timely and accurate exchange of information by allowing the health insurance issuer (typically, carrier, HMO, or TPA) to send the information electronically or to post the information on a web site accessible to the requesting employer.
3. Unlike the old Texas laws (which have been repealed by this bill), the new law will allow an employer to obtain protected health information provided a certification is provided to the health insurance issuer that states federal privacy standards have been fully complied with. The detailed information that will be available includes:

A separate description and individual claims report for any individual whose total paid claims exceed \$15,000 during the 12-month period preceding the date of the report, including the following information related to the claims for that individual:

- a unique identifying number, characteristic, or code for the individual;
- the amounts paid;
- dates of service; and
- applicable procedure codes and diagnosis codes; and for claims that are not part of the report described by the above, a statement describing precertification requests for hospital stays of five days or longer that were made during the 30-day period preceding the date of the report.

Additionally, an employer, after receiving the initial report, has 10 days to request additional information regarding the prognosis or recovery of the individual, if available, and, for individuals in active case management, the most recent case management information, including any future expected costs and treatment plan, that relate to the claims for that individual.

4. In addition to carriers and HMOs, the provisions of the bill are intended to apply to third party administrators who have the claims information. The bill contains liability protection for third party administrators and others responding to a request by providing that they are not subject to criminal prosecution or civil damages if they provide the information in compliance with the provisions of the new law.

The new law applies to requests for information made on or after January 1, 2008.

Other bills of interest to TPAs that passed during the recent session

Identification Cards with Enrollee eligibility information: Insurance Commissioner asks TABA to nominate three for Technical Advisory Committee

HB 522 requires the Commissioner of Insurance to appoint a Technical Advisory Committee on Electronic Data Exchange to advise the commissioner on technical aspects of using the (federal)transaction standards that will enable health benefit plan issuers and administrators to provide access to information technology that will enable physicians and other providers, at the point of service, to generate a request for eligibility information and related data elements that is compliant with the transaction standards. Also provides for the establishment of a pilot program that will involve the use of some type of identification care for enrollees.

The Advisory Committee will consist of various stakeholders including an “administrator”. The Texas Insurance Commissioner has contacted TABA to nominate three administrator representatives, one of whom will be selected to serve on the Advisory Committee. Nominations submitted were LaRea Albert, HealthFirst TPA, Kathy Enochs, Group & Pension Administrators and Sam Mooney, JI Companies.

Greater transparency in health care billing

Generally, SB 1731 will require the Department of State Health Services (DSHS) to create a “Consumer Guide to Health Care” on the DSHS web site that will contain information about billing policies, estimated charges, and personal liability for payment. The bill also requires the Texas Department of Insurance (TDI) to collect information about reimbursement rates that health plans pay to insurers. TDI also would be required to evaluate information collected.

Health care providers will be required to develop standardized bill policies. For example, the following provisions apply to a physician:

- Requires all physicians to develop, implement and enforce written policies for the billing of services.
- Must address policies for discounting for uninsured and medically indigent, interest levels and procedure for complaints.
- Physicians who maintain a waiting area, requirement to post written policies

- For patients receiving services out-of-network or as an uninsured, requires physicians to provide an estimate, upon request, of charges for procedures. Disclosure that estimates may delay procedure; that actual charges may vary because of unknown medical conditions or needed treatment; and, possibility of balance billing.
- Requires an itemized statement for the patient, whether interest is applied to billed services, how to handle billing complaints, and disclosure of network status of the physician.
- If consumer overpays physician, physician required to refund patient within 30 days.

Most health plan issuers, including Chapter 172 political subdivisions and risk pools, will be required to send written notice to enrollees of the billing policies, including when an enrollee may be balance billed for services.

This is a 32 page bill with numerous provisions beyond the scope of this article. You can access the full copy of the bill at www.capitol.state.tx.us or alternatively contact me and I will provide you a copy of the bill and a summary. More detailed information will be provided at the TABA Fall Conference.

Subrogation rights of Chapter 172 political subdivisions and risk pools

SB 561 amends Chapter 172 of the Local Government Code in an effort to improve the subrogation rights of political subdivisions providing health care pursuant to Chapter 172.

The bill generally tracks current settlement practices wherein the political subdivision or pool recovers one-third of the amount recovered (from the tortious third party) or the amount of its subrogation lien, whichever is less.

If the pool's interest is not actively represented by an attorney in a third-party action, it will pay the attorney representing the covered individual a fee as agreed to, or, if no agreement, a reasonable fee, not to exceed one-third of the pool's recovery.

The bill provides several exceptions to allow the covered individual to recover more than one-third of the amount recovered if the value of the covered individuals claim substantially exceeds the amount recovered.

Regulation of TPAs in Workers Compensation

HB 472, filed by Representative Burt Solomons, makes significant changes regarding the regulation of third party administrators in the workers compensation field. The bill was originally intended to place administrators for workers' compensation programs under the regulation of the Texas Department of Insurance. Unfortunately, Rep. Solomons elected to use the third party administrator licensing statute as the vehicle, and in the process, significantly changed some provisions regarding all third party administrators.

Once the bill was filed, TABA representatives, lobbyist and counsel immediately met with Rep. Solomons' staff to explain our concerns and then worked closely with them to improve the bill while minimizing its impact on currently licensed third party administrators.

The bill, as finally passed by the Legislature and signed by the Governor, is very different from the filed bill, and we were able to reduce the potential impact on third party administrators. However, the bill still contains several points that will be of interest to third party administrators. Specifically, those are:

1. You are required to notify the Commissioner of Insurance immediately of any change of control in the licensed entity.
2. The Commissioner of Insurance is authorized to adopt additional record retention requirements.
3. The plan participant notice of third party administration will now be directed to the "injured employee" instead of the plan participant.
4. Any administrator who receives \$10 million or more in annual compensation for administrative services will be required to file a certified audit as part of the annual report.

There are a number of other important and interesting provisions of the bill, particularly for those of you who administer fully insured plans.

Regulation of the secondary market in physician discounts (rental network PPOs)

H.B. 839 by Eiland was a bill to regulate the secondary market in physician and health care discounts. The bill did not pass but it is sure to be filed again next session. TABA agreed with the author that the Legislature needed to achieve greater transparency and efficiency in this area. TABA's Legislative Committee has discussed whether to become more actively involved with this issue during the interim (between now and the next legislative session in 2009) because of its potential impact on self funded employers. This issue will be discussed in more detail at the Fall Conference.

