

HB 3359: Network Adequacy Standards Shouldn't Drive out Competition & Negotiation

The Basics: Network adequacy is an important state and federal patient protection that ensures patients with health insurance have access to health care providers. That includes standards on having physicians, hospitals, and other providers “in network” and within state-defined limits for the time and distance it takes to access care.

Network adequacy standards aren't always achievable.

- Outside of urban areas, Texas counties often lack specialty doctors and even hospitals.
- When that's the case, a health plan makes arrangements to treat patients in other areas and requests a “waiver” from the Texas Department of Insurance (TDI). Under this process, a health plan must create an approved “access plan” to explain how people will get care.
- **Without an adequate network or a waiver, a health plan can't sell insurance.**

There's a second, less common reason for a waiver. Sometimes contracting disputes happen over prices. Health plans and big physician staffing firms or hospitals don't always agree on what an in-network rate should be. Those disputes almost always get worked out, but sometimes waivers are required if negotiations fail.

Texas is home to some of the highest provider consolidation. When health care providers reach anticompetitive market share, they will sometimes demand prices far above market rates and refuse to negotiate. TDI doesn't force health plans to pay these high prices; that kind of government rate setting would drive up premiums.

Examples of Texas Provider Consolidation:

- One ER staffing firm controls over 80% of ER physicians in Austin.
- Over 70% of anesthesia services in Houston are under one group.
- Of the 19 Texas metro areas, 95% have highly concentrated hospital markets.

Our Recommendations:

- **Eliminate waiver hearings when there is no provider to contract with.**
- **Ensure standards are achievable.** It's impossible to meet the requirement that every hospital, ASC, and FSEF have in-network providers of all the specialties in the bill.
- **Restrict waiver hearings to request from providers that want additional scrutiny.**
- **Remove the requirement that plans include a full trauma service area.** This mandate would force small plans and new market entrants out of the state.
- **Make network adequacy waivers more transparent.** TAHP does not oppose increased scrutiny on what rates are being requested by providers and offered by plans.

HB 3359: Oppose Capping Out-of-Network Out-Of-Pocket Costs

Our main concern with HB 3359 is not related to network adequacy or waivers, it is the provision that caps out-of-pocket costs for out-of-network services. Instead of having different limits on what a patient has to pay out-of-pocket for in-network or out-of-network care, those will be the same, and that will increase premiums.

We are not opposed to Texas adopting the Affordable Care Act mandate capping out-of-pocket costs for in-network benefits, but applying a cap to out-of-network benefits will significantly increase premiums and damage the PPO health insurance market in Texas.

- **Raises Premiums on Texas Employers** - One large health plan in Texas expects this change to increase premiums by \$300 million in the small employer market alone—Milliman, a lead actuarial firm, is currently costing out a statewide estimate.
- **Damages the PPO Market in Texas** - Capping out-of-network out-of-pocket costs will eliminate the most popular and affordable PPO health plan products on the market, leaving only very expensive PPO plans.
- **Hurts Small Employers** - Small employers will no longer be able to afford PPO plans and will move to the HMO and EPO market.
- **Goes Above and Beyond Obamacare** - One of the main mandates of the Affordable Care Act was capping out-of-pocket costs, but this was limited to in-network coverage only. **No state, nor Obamacare, nor ERS caps out-of-network out-of-pocket spending at the same level as in-network.**
- **Coverage for elected officials and state employees doesn't go this far either.** ERS has a separate in-network out-of-network cap. With the out-of-network cap 3.5x higher, which keeps premiums in check.
- **Eliminates the incentive for patients to choose more affordable in-network care,** and that means more expensive insurance premiums.

Most Texans get their health coverage from their job, and employers pay the bulk of those premiums.

- In fact, Texans cite a lack of employer provided health coverage as a top reason for being uninsured.
- Small businesses are steadily dropping health coverage—a 17% decline since 2000 in businesses with less than 50 employees. Plus, small businesses have ranked health care costs as the number one concern for the last 20 years.
- Employers currently have a wide range of affordable HMO, EPO, and PPO options to pick from when choosing benefits for their employees.