HB 5099: Right To Shop

TAHP Suggested Encourage Market Innovation & Avoid Concerns

TAHP
The Texas Association of Health Plans

TAHP is Primarily Opposed to these Two Provisions:

- **Out-of-network Requirements:** The bill as filed extends the incentive provisions to any out-of-network provider. This is a main concern of ours for several reasons.
    - **Restructure & Reprice of EPOs/HMOs:** These plans don't have an out-of-network (OON) benefit, forcing these plans to be repriced. Note that all of the individual ACA market plans are HMOs/EPOs. Additionally, the legislation references "allowed" amounts which don't exist in HMO/EPO for shoppable services. These changes would impact the actuarial value (AV) of the plan and therefore the overall cost sharing and premium.
    - **Reprice of PPO plans:** While these plans have OON benefits, the typical "allowed amounts" for OON benefits are 70% (not 95%). This would also impact the plan's actuarial value.
    - **Networks that Ensure Quality:** Health plan network providers must meet quality of care standards to be credentialed. OON providers may have been removed from networks because of licensure violations, quality concerns, or fraud/waste/abuse issues. These providers would be guaranteed a payment without assurance of quality.
    - **Surprise Billing Concerns:** The state's surprise billing law doesn't cover these shoppable services. A health care provider would be able to quote a service and then charge more in the final bill with a guarantee that insurers would be required to pay 95% of the "allowable" amount. On top of that, these providers can also send a balance bill to the patient up to the provider's own created "billed charge".
    - **Existing OON Shopping Mandate:** Texas passed an out-of-network shopping mandate bill last session with HB 2002. The program has reportedly had limited take-up (one claim for a plan of 3 million), nonetheless, the state has already adopted a requirement to incentives patients to shop out-of-network and have those savings reduce their out-of-pocket requirements. Note that this mandate does not apply to ERS.
    - **Lacking Evidence:** While incentive programs in general have evolved across the country, these programs are almost exclusively limited to in-network providers. This includes the state's ERS incentive program called "ShoppERS" established by budget rider in 2019.
- **Mandated Cash Payments:** The bill as filed requires incentives to be provided in cash payments only, with no limit on the amount. This is our 2nd top concern related to the legislation.
    - **Cash payments create potential IRS concerns** with health plans having to send 1099 forms to patients.
    - **Cash payments also create perverse incentives** for patients to seek care (testing, elective procedures) that may be unnecessary and wasteful.
    - **No state has created a cash pay incentive program with no cap** on incentives. Only one small state (NH) has a cash pay program at all, only for state employees.
    - **Evidence supports other incentive programs** including lowering copays and other tools to easily engage patients.

TAHP Suggested Alternative:

- **Preferred Option: Adapt HB 5099 to Allow for a Diversity of Shared Savings Incentive programs.**
    - Expand the types of incentives to include lower cost sharing, gift cards, HRA funds deposits, in addition to cash payments.
        - Evidence particularly supports incentive programs that use lower cost sharing designs. These programs have been shown to significantly reduce health spending and are rapidly being adopted in the self-funded market.
    - Rely on easy to use cost comparison tools created by new price transparency requirements to inform patients of their options for lower cost care.
        - Senator Kolkhorst & Rep. Burrows implemented related price transparency requirements during the 87th session with SB 1137, HB 2090.
    - Limit this program to in-network providers to ensure safe and quality care, avoid negative premium impacts, and protect patients from surprise billing.
        - This is consistent with the existing ShoppERS program created by budget rider in 2019 for ERS. (*See annual report, slides 52-53)*.
    - Allow health plans to identify applicable services and providers for shared savings programs. Note that programs like the ERS ShoppERS program and shared savings programs in other states typically identify services like diagnostic tests and preventive treatments for shared savings.
    - This alternative approach allows market participants to compete to build shared savings incentive programs that most effectively engage consumers and produce cost savings without creating a new mandate.
    - We encourage the legislature to not pass any new mandates and instead remove barriers to allow the market to respond and innovate with shared savings incentives that effectively engage patients.
- **Out-of-Network Option: State employees do not have a similar option to commercial health plans to apply out-of-network care costs to in-network cost sharing.**
    - HB 2002 last session mandated an out-of-network shopping incentive program on commercial health plans.
    - ERS has an in-network shopping incentive program through the ShoppERS program. However, the OON shopping mandate in HB 2002 did not apply to state employees.
    - Note that Rep. Oliverson has filed HB 1687 this session to add ERS to these requirements.