

Resolution in Opposition of Legislative Restrictions on Health Plans to Terminate or Non-renew Physicians due to Out-of-Network Referral Patterns.

The Greater Houston Partnership opposes legislation that results in health plan limitations concerning their ability to terminate or non-renew physician contracts for out-of-network referral patterns. Regular referrals to facilities or other providers with financial interest in the referring facility or other provider's practice result in costs far exceeding in-network and erode the contracting arrangement between network physicians, provider and health plans.

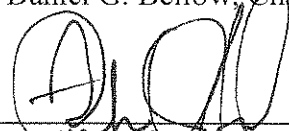
The Greater Houston Partnership acknowledges that:

- Physician should always have the right to refer their patients to medically necessary treatment. If the most appropriate treatment is outside the network, the physician should have no barriers for referral. However, when there appears to be a pattern of referral adding significant costs to the employer and employees of company insured with the health plan, and there appears to be no medical decision directing the member outside the network, the health plan should have the ability to protect the employer's and employee's health care costs and either terminate or non-renew based on referral patterns.

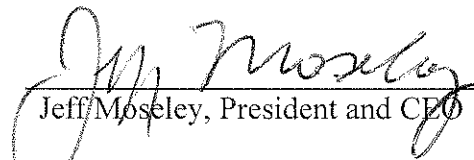
The Greater Houston Partnership urges lawmakers to oppose legislation that will result in increased costs and unnecessary care to employees and their employers.



Daniel G. Bellow, Chairman



Patrick Oxford, Secretary



Jeff Moseley, President and CEO

MEMORANDUM

DATE: May 6, 2009

TO: Greater Houston Partnership Executive Committee

FROM: Daniel J. Wolterman, Chairman
Health Care Advisory Committee

SUBJECT: Resolution of the Executive Committee in Opposition of Legislative Restrictions on Health Plans to Terminate or Non-renew Physicians due to Out-of-Network Referral Patterns.

RECOMMENDATION

The Greater Houston Partnership opposes legislation that results in health plan limitations concerning their ability to terminate or non-renew physician contracts for out-of-network referral patterns. Regular referrals to facilities or other providers with financial interest in the referring facility or other provider's practice result in costs far exceeding in-network and erode the contracting arrangement between network physicians, provider and health plans.

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BACKGROUND

On January 29, 2009, Texas State Senator John Carona filed Senate Bill 586 relating to the operation of certain managed care plans regarding out-of-network health care providers. SB 586 and its companion bill, HB 1442 filed by Representative Kelly Hancock, place limitations on health maintenance organizations from terminating, or threatening to terminate, participation of physicians or health care providers for solely

referring enrollees to out-of-network providers. These bills invalidate health plan contracts requiring health care providers to refer in-network facilities whenever possible for the treatment of patients' medical conditions and undermine the cost savings and quality of patient care that networks produce.

Employers purchase health insurance from health plans with the expectation that the health plan partners with network physicians, hospitals and surgery centers to ensure enrollees have access to the broad array of physicians and facilities that can provide for almost all care. Health plans contract with network physicians, in part, because these physicians agree to assist in cost containment efforts by referring patients to other in-network providers when possible, and the network of providers has been credentialed for quality and with which procedure prices have been contracted in advance.

Employers and health plans also provide for an out-of-network benefit that is designed to provide coverage in the rare situation in which a particular service is not available in-network or is not available in a particular geography. In the City of Houston, this situation does not exist, as all services are available in health plan networks. In the last several years, Houston has seen the creation of many new outpatient surgery and other facilities, many of which have chosen not to participate in any health plan networks, and in which particular physicians have a direct ownership interest or other financial interest. Most of these physicians participate in health plan networks to gain access to patients and then are referring up to 100% of those patients out-of-network, greatly increasing employer and health plan costs.

As a result employers and health plans have seen an alarming increase in unnecessary out-of-network cost where the cost of the individual procedures is three to four times greater than in-network costs. Health plans have attempted to contract with these facilities to bring them in-network and have attempted to work with physicians to have them refer patients in-network with limited success. As a last resort, health plans and employers need to be able to terminate physicians from networks who are referring the majority of their patients out-of-network unnecessarily. Most of these out-of-network facilities also do not accept uninsured patients, increasing the burden on those facilities that do.

HMO coverage features a closed network in which benefits are not available through non-network providers except in cases of emergency. Preferred provider organization (PPO) plans offer patients coverage for both in-network and out-of-network services but still employ managed care principles by incentivizing the use of network providers through cost sharing structures and arrangements with their network physicians to direct enrollees to other participating network physicians. Patients are still free to utilize out-of-network providers, though they will pay a higher percentage of the cost.

Some physician groups have adopted a business model under which they charge prices far above market rates, refer patients to out-of-network facilities in which they have an ownership interest, waive the patient coinsurance requirements, and seek reimbursement from the health plan. This type of abuse has a significant impact on costs for employer

groups by increasing employer cost, and employee premiums, further increasing the number of people and companies who cannot afford insurance, and ultimately creating more uninsured employees.

There are numerous studies demonstrating the link between referral patterns of physicians to out-of-network facilities in which they have an ownership interest. One such study conducted by a national health care carrier analyzed the costs associated with a school district in the greater Houston region making referrals to an out-of-network facility. The results indicated that in 2006, \$4.8 million was spent on out-of-network services, but in 2007, when a new physician-interest hospital was opened, the costs increased to \$9 million. Of that, \$4 million went to pay for the services employed at the new hospital. In 2008, the school district spent \$10.7 million in out-of-network costs, attributing \$6.8 million of those costs to services provided at the new hospital. These figures indicate approximately \$400,000 per month is spent in unnecessary costs for out-of-network referrals. These costs are impacting public school districts that are primarily self-insured, which increases their costs at a time when funding is becoming increasingly tight for public education. Another analysis showed four large school districts spent over \$17 million on non-par expenses in 2008 that would have cost approximately \$4-6 million on an in-network basis.

Unfortunately, this is not a challenge faced solely by school districts. There are many large employers throughout the region that suffer this same issue. Patients depend on their physicians to deliver medical care with the highest quality at reasonable costs. In these situations where physicians refer enrollees to out-of-network physicians on a consistent basis in violation of their contract, health plans should be given the option to terminate the contract. Neither SB 586 nor HB 1442 allow for this possibility.

LEGISLATION NEEDED

The Greater Houston Partnership requests legislative initiatives that allow for health plans to terminate, threaten to terminate, or non-renew contracts demonstrating physician for out-of-network referral patterns.

FISCAL IMPACT

The bills currently before the legislature, SB 586 and HB 1442, make no appropriation.

KNOWN OPPOSITION:

Opposition would be expected from physicians who are financially benefiting from excessive out-of-network referrals and the associated out-of-network facilities.

RESOURCES REQUIRED:

None.