



EVERY TEXAN

Formerly Center for Public Policy Priorities

March 22, 2021

House Insurance Committee

Via email by Stacey Pogue, Senior Policy Analyst, Every Texan, pogue@everytexan.org

Re: Every Texan written comments in support of HB 2761 – uniform, upfront summaries of coverage for all types of health plans and arrangements

Dear Chairman Oliverson and Committee members:

Summary

Every Texan (formerly Center for Public Policy Priorities) supports HB 2761 because it will help consumers to make an informed choice when they pick health coverage. Some consumers want comprehensive health coverage. Some want alternative coverage or bare-bones coverage. But no one wants a consumer to pick a plan that is a bad fit simply because they didn't understand the coverage, or mistook a bare-bones plan (or a few bare-bones plans bundled together) for full coverage. When that happens, consumers can be saddled with significant medical debt.

House Bill 2761 ensures that consumers who don't get job-based health insurance and must buy on their own can easily get clear and consistent information on what is and is not covered before they sign a contract or hand over any money. Ensuring that clear information is available upfront is a bare-minimum level of consumer protection, but it is lacking today in growing segments of the market for health coverage. As the market for "alternative" health coverage has grown, so have complaints about consumer confusion, misleading marketing, and the inability for consumers to get written plan information before they make a payment.

Traditional health insurance has been subject to a federal requirement for an upfront, uniform, plain-language summary of coverage since 2012. This is sometimes referred to as a "nutrition label" for coverage. Last session, the legislature responded to growing consumer confusion about one type of alternative health plan called "short-term" insurance by extending the upfront, plain-language "nutrition label" framework to these plans with unanimous support (SB 1852 and CSHB 2507, 2019). HB 2761 takes this same "nutrition label" framework passed last session and extends it to all other types of alternative health coverage listed on the Texas Department Insurance website. This concept was studied as part of the most recent interim charges for the House Insurance Committee, and a broad array of stakeholders including patient groups, provider associations, and health insurance agents submitted supportive comments.

Background

Consumers shopping on their own cannot pick a plan that meets their needs if they don't have a basic understanding of how the coverage works. Health coverage, of course, is pretty complicated. To make an informed choice on traditional health insurance, a consumer would have to understand and compare features like deductibles, coinsurance, provider networks, and formularies.

In recent years, making an informed choice has become even harder due to a proliferation of “alternative” health plan arrangements that look more and more like traditional insurance, but differ from it in key ways. Sometimes, a few alternative coverages are sold bundled together. **These plans are often marketed to consumers as a substitute for traditional, comprehensive health insurance, but they lack many standard consumer protections or robust coverage.**

Consumers must now be able to distinguish alternate plans from traditional coverage, and understand how an alternate plan operates differently than the traditional insurance most of us are used to. The stakes can be pretty high if a consumer picks a plan that doesn't meet their needs. For example, if a person with a preexisting condition mistakes alternate coverage for traditional insurance, treatment for their condition is unlikely to be covered. They may have to choose between foregoing treatment or facing unpaid medical bills and mounting medical debt.

The House Insurance Committee held a hearing on a bill about health care sharing ministries a few weeks ago. Health care sharing ministries are careful to say they aren't insurance—although sometimes only in the fine print—but many of the plans look like health insurance. Health care sharing ministries are just one type of alternative coverage.

TDI's website lists many types of alternative health plan arrangements, including:¹

- short-term plans,
- fixed indemnity plans,
- limited benefit plans,
- association health plans
- health care sharing ministries,
- direct primary care arrangements, and
- discount health plans.

Alternative plans have a few things in common:

- Premiums for these plans are often cheaper because they generally have less coverage, and sometimes, very little coverage;
- They are more loosely regulated by state and federal agencies, and in some cases, not overseen by Texas Department of Insurance (TDI) at all;
- They often limit or exclude coverage for preexisting conditions;

- There are growing reports from the media and researchers of aggressive, misleading, or deceptive marketing of alternative plans. Some plans rely heavily on telemarketing, using scripts designed to obscure the plan’s limited coverage or lead consumers to believe, incorrectly, that it is Affordable Care Act-compliant. There are growing reports from the media and researchers of aggressive, misleading, or deceptive marketing of alternative plans. Some plans rely heavily on telemarketing, using scripts designed to obscure the plan’s limited coverage or lead consumers to believe, incorrectly, that it is Affordable Care Act-compliant. Consumers also report being unable to get written information on benefits and limits before they have sent in a payment;² and
- With the exception of short-term plans, none of them have to provide a modern, plain-language, best-practice summary of coverage upfront like traditional health insurance.

A coverage summary can help ensure consumers are well-informed. A coverage summary is an upfront disclosure that contains an understandable summary of what the plan does and does not cover. These coverage summaries are sometimes referred to as “nutrition labels” for coverage. They have a uniform layout; they use plain language; they are brief but contain needed information. They help shoppers understand and compare plans and make informed choices.

Federal law has required traditional health insurance plans to provide a clear and consistent summary of coverage to shoppers and enrollees since 2012.³ Last session, the Texas Legislature responded to the growing market for “short-term” plans and increasing consumer confusion by extending the “nutrition label” framework to this one type of alternative health plan. The uniform coverage summary for short-term plans passed unanimously out of the House Insurance Committee and unanimously through the House.⁴ TDI created an easily understandable summary of coverage for short-term plans through rule.⁵

Today, there is a patchwork of notice requirements for alternative plans. Some have an outdated, limited summary requirement last updated in 1983. Some just require a warning label today, akin to “this is not insurance.” A warning label does not help a consumer understand what is covered, what is not, and how the plan or arrangement works. It is like an allergy warning label on cereal box that will tell you if the cereal contains nuts or gluten. The nutrition label is different; it lists all of the ingredients and nutrition information in a standard, easy-to-read format. A warning label is necessary, but alone, does not provide sufficient information. Still other types of alternative plans have no requirements for an upfront summary of coverage at all. **None of these plans affected by HB 2761 is subject to a modern, plain-language, best-practice disclosure like traditional health insurance or short-term plans.**

The House Insurance Committee studied the disclosures in HB 2761 as part of its most recent interim charges (interim charge #1, related to SB 1852). [Patient groups](#), [medical associations](#), and [health insurance agents](#) all submitted comments in support extending the disclosure for short-term plans passed last session to other types of non-traditional coverage to help better inform consumers.

Key provisions in HB 2761

- HB 2761 takes the same upfront, “nutrition label” framework applied to short-term plans last session and applies it to the other types of health plans listed as alternative plans or arrangements on TDI’s website, each listed above. It will ensure that consumers shopping for any type of health plan or arrangement get an upfront, plain-language disclosure with an understandable summary of what the plan covers and doesn’t.
- Consumers will get these coverage summaries upfront, before they submit an application or make an initial payment.
- TDI will create a template for each type of plan through rule, just as it did for short-term plans after last session. TDI has expertise in plain-language communication to consumers. The bill allows TDI to tailor the notice to fit the parameters of a plan, but in general, the notice will explain:
 - Whether the coverage is insurance,
 - Whether the plan covers preexisting conditions,
 - How long the plan lasts and whether it is renewable,
 - Whether the coverage ending would be considered a qualifying event needed to let a consumer buy other insurance outside of an annual open enrollment period,
 - Which key medical services are covered or limited, and
 - Any unique plan features that set the coverage apart from traditional health insurance.
- TDI must consult with the Office of the Attorney General on the template for health care sharing ministries and with the Texas Medical Board on the template for direct primary care arrangements.
- TDI must approve coverage summary disclosures before they are used. A health plan or arrangement can modify a template, if needed, as long as changes are noted and approved by TDI.
- Consumers need to sign the disclosure and the health plan must retain the signed disclosure for 5 years. Electronic signatures are allowed.
- TDI can write rules to implement the bill.

¹ Texas Department of Insurance, <https://www.tdi.texas.gov/news/2019/tdi11252019.html> and <http://www.texashealthoptions.com//cp/qhp.html>.

² Government Accountability Office, Results of Covert Testing for Selected Offerings, August 2020, <https://www.gao.gov/products/GAO-20-634R>.

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³ An example federal Summary of Benefits and Coverage is available at <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Sample-Completed-SBC-Accessible-Format-01-2020.pdf>.

⁴ Uniform disclosure for short-term plans passed out of House Insurance in CSHB 2507 and was added to SB 1852 as an amendment on the House floor.

⁵ The TDI template for short-term plan coverage summary with instructions for insurers is available at <https://texreg.sos.state.tx.us/fids/201905008-1.pdf>.