



Texas Senate Bill 7 Provisions on HCC and TIHCQE

By: Jan Reimann Newsom

Texas Senate Bill 7 recently signed by Governor Perry contains a number of provisions dealing with health care reforms and reimbursement restructuring, particularly dealing with Medicaid. It also includes two sections that allow for the creation of a new type of health care entity known as a Health Care Collaborative ("HCC") regulated by the Texas Department of Insurance ("TDI") and provides for a commission to study health care quality and delivery issues and make recommendations to the Texas Legislature for future changes.

Health Care Collaboratives

New Chapter 848 is added to the Insurance Code to allow for the creation and regulation of HCCs. A HCC is an organization:

- that arranges for medical and health care services for insurers, HMOs and other payors in exchange for payments in cash or in kind;
- that accepts and distributes payments for medical and health care services;
- that consists of physicians alone or physicians and any combination of insurers, HMOs and other providers including hospitals; and
- that has a certificate of authority (license) from the TDI Commissioner.

A HCC that complies with the Insurance Code may contract for, accept and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including bundled payments, capitation or global payments or pay-for-performance based payments for medical and health care services. The new provisions do not appear to override existing provisions governing the acceptance of risk-based compensation for services provided by physicians or hospitals, so forthcoming regulatory clarification may provide additional guidance on any limitations to how HCCs may accept capitation.

A Health Care Collaborative may not contract to provide services on a prepaid, capitation or indemnity basis unless it is licensed as a HMO or insurer. While these restrictions appear somewhat contradictory, it appears that the intent was to prohibit a HCC from contracting to provide downstream capitation, pre-payment or indemnity payments to providers not a part of the HCC. The TDI is required to review a HCC's proposed payment methodology to ensure compliance with this section. A HCC license is not a license to engage in the business of insurance. However, a HCC will be able to contract for both physician and hospital payments.

Exemptions from the requirement to obtain a HCC license include Delegated Entities under the Insurance Code and health care providers engaged in the delivery of health care services other than medical care as part of a HMO network, among others.

Licensure requirements will be clarified through regulations developed by TDI and the Attorney General by September 1, 2012. Among other requirements, the application must demonstrate that an adequate number of primary care physicians are participating, and identify a service area where medical services are accessible to participants. A HCC license will be effective for one year, and renewals will be considered as if the application for renewal were a new application. The law provides for up to 190 days for an initial HCC application to be considered by TDI. If the Commissioner approves the application, the application



will be sent to the Attorney General for further consideration. The Attorney General has up to 60 days from receipt of the application to make a determination on licensure.

Renewal applications must be sent to TDI at least six months ahead of the license expiration date. The Commissioner must approve or deny a renewal application at least 20 days before expiration of the current license. If the Commissioner does not act on a renewal application before the one-year anniversary of the license issuance or renewal, the license expires on the 90th day after that date with no further action from TDI.

Governance rules for HCCs are specified in the law. If non-physicians participate in the entity, the Board of Directors must have an equal number of physician and non-physician members, plus a tie-breaking, business-experienced member. Board members may be removed only for cause. Board member terms are limited to two years, after the initial Board limit of 18-month terms. If the HCC includes hospital-based physicians, the Board must include one hospital-based physician member. The Board must include three non-voting, ex-officio community members from the service area where the HCC operates.

The Board must establish a compensation advisory committee to develop and make recommendations to the Board regarding charges, fees, payments, distributions or other compensation for health care services provided by those who participate in the HCC. The composition of the committee is specified in the law. The HCC must have policies and procedures to prevent the sharing of fees, charges and compensation data among non-HCC physicians and providers.

Other requirements include that the HCC may not use a covenant not to compete to prohibit a physician from providing medical services or participating in another HCC in the same service area; may not prohibit a physician or other health care provider, as a condition of participating in the HCC, from participating in another HCC; and must maintain sufficient working capital and reserves. The financial requirements are expected to be established in regulations.

Antitrust concerns are addressed by requiring review of the application for a certificate of authority by the Attorney General. A certificate "shall be issued" if the TDI Commissioner is satisfied that the pro-competitive benefits of the proposed HCC are likely to substantially outweigh the anticompetitive effects of any increase in market power. A HCC is subject to sanctions if it has or is utilizing market power in an anti-competitive manner.

It is expected that regulations will be developed by TDI and the Attorney General's Office to facilitate the licensing and regulation of the new HCC entities. The regulations are not required to be in place until September 1, 2012.

Texas Institute of Health Care Quality and Efficiency

The Health and Safety Code is amended by SB 7 to add a new Chapter 1002, which establishes the Texas Institute of Health Care Quality and Efficiency ("TIHCQE"), to be administratively attached to the Health and Human Services Commission. The Board of Directors of the TIHCQE will consist of 15 Governor-appointed, 10 ex-officio, non-voting members specified in the law, and representatives of every State agency and system of higher education that purchases or provides health care, as determined by the Governor.

The TIHCQE is charged with making recommendations to the Legislature regarding improvement of health care quality, efficiency, potentially preventable events, measuring tools and creating a State Plan addressing these areas. Reports to the Governor and other legislative leadership on improving the quality and efficiency of health care in the State, improving reporting, consolidation and transparency of health care information and implementing and supporting innovative health care collaborative payment and delivery systems established through HCCs under the Insurance Code are due on December 1, 2012, and a report on the feasibility and accessibility of an all-payer claims database is due on January 1, 2013.

For more information on the matters discussed in *Locke Lord QuickStudy*, please contact the author:

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