Charles Miller, Senior Policy Advisor

charles.miller@texas2036.org

@CharlesTXPolicy
Data tells us Texas faces significant challenges, requiring state policy action now and into the future so that Texas is the best place to live and work.
Assessing Texas’ performance against competitors

Peer states identified based on index including 15 factors across 3 domains

Competing for Business
Competing for Talent
Similar Size

Together, Texas and its peers account for 58% of the total U.S. population and 62% of total U.S. GDP
Hospital Market Consolidation

Among peer states, Texas has the highest percentage of its population in Highly or Very Highly Concentrated Markets.
Commercial Prices vs Breakeven Prices

All Hospitals State-wide

Small Hospitals (<50 Beds)
Types of Anti-Competitive Practices

1. **Used by Medical Providers**
   - **All or Nothing / Vertical-Tying**
     Requires a network to include all providers owned by the group in-network in order to get any of them.
   - **Anti-Tiering / Anti-Steering**
     Prohibits benefit plans from encouraging enrollees to use lower-priced or higher-value providers, or to offer tiered networks based on provider prices.

2. **Used by Insurers**
   - **All-Product Clauses**
     Requires a provider to be in-network with all of an insurer's products (PPO, HMO, EPO, etc...) if they wish to be a part of any of them.
   - **Most-Favored Nation**
     Prohibits a provider from offering a lower price to any other buyer.

3. **Used by Both**
   - **Gag Clauses**
     Already prohibited by federal law, but still appear common. Used to hide prices, claims data, or other valuable information.
   - **In-House Referrals**
     Used by vertically consolidated entities to refer patients to other providers owned or controlled by the referring entity.
HB 711 restores competition to Texas' health care markets by prohibiting contracts that include:

- **Anti-steering clauses** that restrict employers and health plans from encouraging enrollees to obtain services at a competitor or from offering incentives to use specific providers.
- **Anti-tiering clauses** that require employers and health plans to place all physicians, hospitals, and other facilities associated with a hospital system in the most favorable tier of providers.
- **Gag clauses** that prohibit any party from disclosing relevant price or quality information to the government, enrollees, treating providers, plan sponsors, and potential enrollees and plan sponsors.
- **Most favored nation clauses** that prevent providers from offering prices below those contracted with a particular carrier.

HB 711 also imposes a **fiduciary duty on health benefit plans**: If they encourage enrollees to obtain a service from a particular provider, including offering incentives to encourage specific providers, introducing or modifying a tiered network plan, or assigning providers into tiers, they must do it for the primary benefit of the enrollees, not themselves.
HB 711: A Broad Coalition of Support
Thank You!

Charles Miller
Senior Policy Advisor
charles.miller@texas2036.org
574.315.1358
@CharlesTXPolicy