



MEMBERS

Gwyn Shea  
Vice Chairman  
David Counts  
Chairman for Budget & Oversight  
Kim Brimer  
James Hury  
Mike Martin  
Randy Pennington  
Mark Stiles  
M.A. Taylor

House of Representatives  
Committee on Insurance

EDDIE CAVAZOS  
CHAIRMAN

January 19, 1993

STAFF

Rob Edwards  
Chief Clerk  
Tamara Milliken  
Ana Kirk  
Assistant Clerks  
Reagan Bldg., Room 245  
(512) 463-0788

MBJ

FILE # ~~AL 18650 93~~

RQ-481

I.D.# 18650

Attorney General Dan Morales  
209 West 14th Street  
Price Daniel, Sr. Bldg., 7th Floor  
Austin, Tx 78701

Attention: Madeline Johnson, Opinions Committee

JAN 26 93

Dear General Morales:

Opinions Committee

During the last session of the legislature, House Bill 2 was adopted, and contained therein were amendments to Section 14, Texas Health Maintenance Organization Act (Article 20A.14, Vernons Texas Insurance Code). That amendment added a new subsection (h) that reads as follows:

A health maintenance organization that provides coverage for health care services or medical care through one or more providers or physicians who are not partners or employees of the health maintenance organization shall provide a twenty (20) calendar day period each calendar year during which any provider or physician in the geographic service area may apply to participate in providing health care services or medical care under the terms and conditions established by the health maintenance organization for the provision of such services and the designation of such providers and physicians. A health maintenance organization will notify, in writing, such provider or physician of the reason for nonacceptance to participate in providing health care services or medical care. This section may not be construed to (1) require that a health maintenance organization utilize a particular type of provider or physician in its operation; (2) require that a health maintenance organization accept a provider or physician of a category or type that does not meet the practice standards and qualifications established by the health maintenance organization; or (3) require that a health maintenance organization contract directly with such providers or physicians.

The intent of this subsection (h) is to require health maintenance organizations to provide physicians and health care providers the opportunity to participate in providing their respective

health care services or medical care under terms and conditions established by the health maintenance organizations.

Part of the statute provided that a health maintenance organization, if it accepted a provider or physician of a category or type, could require that such health care provider or physician meet the practice standards and qualifications established by the health maintenance organization.

Subsequently, the State Board of Insurance was asked to adopt rules and regulations to implement this statutory directive and, in doing so, simply republished the statutory provision without the adoption of any clarifying rules or regulations determining what the standards of practice or qualifications would be. The department published this effort in 17 Texas Register 5362, July 31, 1992, and it became Texas Department of Insurance Rule 11.1402(a)(2).

When the State Board of Insurance had similar requirements to adopt rules and regulations dealing with preferred provider plans, they adopted extensive rules clarifying the statutory requirements and published the same as 28 TAC Section 3.3701 - 3.3705.

Because similar clarifications were not adopted for the changes made by HB 2 to Section 14 of the Texas Health Maintenance Act, the intent of the statutory changes has been open to misinterpretation, especially as it pertains to the lack of adequate opportunity for pharmacists and pharmacies to be allowed to qualify to provide their services to beneficiaries of HMO plans.

My specific questions are as follows:

(1) Do the rules adopted by the State Board of Insurance to implement the provisions of House Bill 2 legally and constitutionally clarify the provisions contained therein, such that HMO's may know what requirements must be promulgated for a provider to meet the practice standards and qualifications established by such HMO?

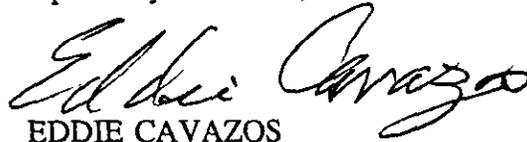
(2) Do the rules as adopted by the State Board of Insurance to implement the provisions of House Bill 2 legally and constitutionally clarify what practice standards and qualifications are, such that pharmacies and pharmacists may qualify with an HMO under the provisions of the above-referenced statute?

(3) Do the rules as adopted by the State Board of Insurance to implement the provisions of HB 2 legally and constitutionally establish that when a provider or physician of a category or type meets the practice standards and qualifications established by the health maintenance organization, the health maintenance organization is required to utilize or accept that provider to provide services for the insureds of the HMO?

(4) Do the rules as previously published by the Board as 28 TAC 3.3701 - 3.3705 apply to pharmacies or pharmacists providing services to insureds of HMO's? And, if they do, do the rules adopted by the State Board of Insurance to implement the provisions of House Bill 2 expand, amplify, or further clarify the rules previously adopted by the Board?

I appreciate your prompt attention to this opinion request.

Respectfully submitted,

A handwritten signature in black ink that reads "Eddie Cavazos". The signature is written in a cursive style with a large, sweeping "E" and "C".

EDDIE CAVAZOS  
Chairman, Committee on Insurance