

Government Mandated Doctor Contracts: Bad Medicine for Texas

Mandated Doctor Contracts are Unnecessary – Will Increase Healthcare Costs for Businesses and Consumers

At a time when the nation is searching for ways to contain medical expenses, there is little support for government efforts that will add unnecessary regulation to the healthcare process and increase healthcare costs paid by businesses and consumers. The lack of justification for such action is further reinforced if those efforts provide no discernable medical advantages to the delivery of care. Such is the case with the concept of government mandated doctor contracts also known as standardized physician contracts which run counter to the national trend of pursuing actions aimed at reducing costs of healthcare while streamlining the system that delivers it. A thorough review of the mandated doctor contract proposal reveals they would:

- contribute little to improving the healthcare process,
- increase administrative expenses within the system,
- duplicate certain regulatory requirements already in place,
- impede health plans' ability to help manage health care costs,
- undermine implementation of innovative practices such as pay-for-performance initiatives, and
- ignore such factors as regional demographics within the markets served and the diversity of health plans' actuarial processes used to project healthcare costs.

Clearly, the impact of government mandated doctor contracts on the healthcare system would be costly, complicated, and would provide no direct benefit to those who pay for the delivery of care. A closer examination of the issue uncovers the real basis such a proposal is being advanced and underscores the negative consequences it would have on the healthcare system, consumers, and businesses. **In short, government mandated doctor contracts will increase administrative costs and make insurance coverage less affordable for Texans.**

Healthcare Contracting in Texas

Since health plans have emerged as a part of our nation's healthcare infrastructure they have increased the role that market factors play in the pricing of healthcare. Some physician groups have consistently attempted to circumvent those market dynamics to strengthen their ability to control the prices for medical services they offer. Advancing the concept of a government mandated doctor contract is the latest attempt to shift the pricing of healthcare away from conventional market forces and into governmental arenas which would diminish the checks and balances of medical costs the market provides.

Today nearly all commercial and consumer contracts are form driven, as are the managed care contracts in Texas. Pre-printed contracts allow for efficient contracting and many of the most salient terms of managed care contracts (those relating to performance, payment provisions or remedies) have been mandated by legislation and regulation, making form contracts quite easy to maintain. With over 40,000 physicians and more than 30 health plans operating in the state, the efficiency and rationale for a form driven contracting process is apparent. These dynamics also help explain why **no other state has adopted a government mandated doctor contract.**



**HIGHER
= Healthcare
Costs**

Little Precedent for Regulated Contracts

No precedent exists for standardization of business-to-business contracts in a mature managed care environment. Presumably, this is because it is nearly impossible to legislate or regulate all necessary terms with enough flexibility to support the infinite variety of contracting circumstances. In order to fully appreciate the challenges of implementing a mandated doctor contract, it is necessary to turn to non-health related industries.

One familiar standardized contract is the real estate contract for home transactions and lease agreements. These contracts are business-to-consumer contracts and their efficacy lies in the ability of the average consumer to rely on the standard contract to provide appropriate protections. The sheer number of new real estate transactions each day, the relatively standard process which is involved in buying a home, and the uneven balance of knowledge between the company and the consumer makes standardized contracts acceptable in this arena. Another crucial distinction between standardized real estate contracts and provider proposals for government mandated doctor contracts is that real estate contracts are voluntary. No consumer is obligated to use the standard real estate contract.

Texas Health Source

A recent attempt to standardized business-to-business transactions resulted in the Uniform Computer Information Transactions Act. This arose from a need for a coherent, uniform body of law to govern revolutions in the emerging industries of telecommunications and computer technology. As online systems altered how information transactions were performed, guidance on fundamental issues associated with contracting was needed. And yet, after many years of work, what emerged were guidelines for transactions and some uniform definitions and provisions, but not a fully standardized contract. This example illustrates the difficulties of developing a fully standardized contract which is fair to both parties, flexible enough to meet the needs of multiple users, and written such that it can evolve over time as business needs change.

Contracts between physicians and health plans represent a business-to-business transaction with no discernable imbalance of knowledge. The American Medical Association provides contracting guidance for its member physicians and there are rigorous disclosure requirements in place in Texas to assist the physician in understanding the contract. Recently enacted Texas laws were specifically adopted to assure full disclosure of relevant contract terms to providers at the time of contracting and upon request. Current managed care contracts have been revised over time as necessary to reflect historical and current practice trends as well as current law. Most Texas managed care networks are well established and, except for re-negotiations or network expansion, most of what occurs in today's market is "maintenance contracting".

Lastly, setting a precedent for government mandated doctor contracts in the managed care arena could easily lead to requests from other industries for similar assistance. The cost, time, and political wrangling involved in contract development could prove to be an unwanted burden for the Legislature.

Sector	Circumstances	Results
Real Estate	<ul style="list-style-type: none"> • High number of real estate transactions • Standardized process involved in buying home • Uneven balance of knowledge between financial company and consumer 	Standardized real estate contract for home purchases to protect consumers. Contract is voluntary for consumers.
Computer Technology	<ul style="list-style-type: none"> • Emerging telecommunications and computer technology industries • Need for uniform body of laws to govern contracting involving online systems. 	Guidelines for transactions and uniform definitions and provisions. No standardized contract.
Medical	<ul style="list-style-type: none"> • Conventional market forces have governed contractual arrangements between physicians and health plans for 30 years. 	No state has adopted a government regulated medical contract.

Mandated Doctor Contracts Will Increase the Cost of Healthcare

The adoption of mandated doctor contracts would reduce a health plan's ability to contain costs resulting in significant increases in healthcare expenses. Based on historical re-negotiation experience of health plans, it is expected that physicians may demand as much as 10-15% increases in their fee schedule if a new contract form is mandated. These costs would be passed through to Texas employers and consumers, resulting in estimated premium increases of between 5% and 15% over the increases already incurred due to medical inflation.

According to a survey of Texas health plans, the administrative costs of efforts to comply with a state mandated contract has been estimated at between \$17 million and \$20 million for the industry during the first two years of implementation. It is likely that there will be second phase costs, estimated to be as much as \$10 million annually associated with implementing the modifications necessary to ensure the long term viability of the standardized contract.

The fiscal impact on the state must also be considered. State employees, CHIP, and Medicaid are all dependent on managed care contracts. Any changes to commercial contracts would apply to the contracts governing these programs requiring the state to absorb significant costs in the re-contracting efforts.

The evidence is compelling that a government mandated doctor contract would be costly to implement and maintain. Equally clear is the lack of any proven benefit to the healthcare system that would justify the unnecessary increases in costs resulting from mandated contracts. Additionally, by driving healthcare costs upward, government mandated doctor contracts will create further disincentives for managed care companies to do business in Texas producing unfavorable market factors for consumers and businesses who pay for healthcare. Increased healthcare costs due to additional government regulation with no meaningful justification does not appear to be the kind of public policy Texans would embrace.

GOVERNMENT MANDATED DOCTOR CONTRACTS COULD HARM HEALTH CARE QUALITY

One of the recent innovations of health plans has been the introduction of provider incentives linked to the level of quality care delivered. Often referred to as “Pay for Performance” (P4P), these programs reward providers for meeting certain quality measurements in the delivery of care. There are many different variations of P4P and many programs reward providers not only for performance based on absolute quality measures, but also by comparing providers to their peers and rewarding improved performance. P4P programs also reward providers for increased use of information technology and for patient satisfaction. While P4P generally includes similar measures for quality, successful development depends upon the ability of health plans to craft quality initiatives based on local market conditions, such as the willingness of providers to participate. Government mandated doctor contracts could undermine the movement to reward physicians of high performance and positive outcomes if health plans are forced to develop a “one size fits all” approach to rewarding for the delivery of quality healthcare. In addition to quality concerns mandated contracts could also lead to higher health care costs as P4P programs have demonstrated that increased quality also means lower costs. BlueCross BlueShield of Texas has projected that implementing P4P in the state’s own health plan would save \$109 million annually.

COLORADO SAYS “NO!”

RECENT EFFORTS TO ADOPT A GOVERNMENT MANDATED DOCTOR CONTRACT FAILED IN COLORADO.

Opponents of the proposal included Colorado Governor Bill Owens who stated that the proposal, **“creates an unnecessary intrusion by the government into the contracts between private parties.”**

Two prominent Colorado newspapers concurred:

The Pueblo Chieftain wrote, **“we don’t believe the state should dictate business relationships between parties.”**

The Rocky Mountain News agreed, referring to the proposal as **“bizarre intrusion by the state into an activity usually handled by private parties.”**

GOVERNMENT MANDATED DOCTOR CONTRACTS DUPLICATE EXISTING REGULATION COVERING CONTRACTS

Many of the salient terms (those related to performance, payment provisions and remedies) of proposed government mandated contracts are already dictated by Texas or federal laws and regulations. Current law already covers the following contracting terms:

- Key Definitions
- Prompt Payment Provisions
- Accessibility
- Mediation/Arbitration
- Termination of Contract
- Continuity of Care
- Physician’s Right to Contract
- Credentialing of Physicians
- Quality of Care Monitoring

Additionally, current state law requires health plans to provide a detailed fee schedule disclosure document to providers at the time of contracting which explains all contract provisions and company policies that impact reimbursement. In fact, it appears that in excess of 60% of the most important terms in proposed government regulated medical contracts are already covered by existing laws. The terms not already mandated should not be subject to additional regulatory efforts as the cost of drafting and enforcing these provisions would far exceed the benefit of doing so.

GOVERNMENT MANDATED DOCTOR CONTRACTS WILL CREATE AN INFLEXIBLE AND COMPLICATED BUREAUCRATIC PROCESS

The unique demographics and healthcare markets throughout Texas would present significant challenges to mandating doctor contracts beyond regulations already in place. In Texas, there are a number of distinct managed care markets with service delivery areas ranging from major metropolitan areas to rural counties. These markets include areas which have federal designations as Medically Underserved Areas (MUAs) and Health Professional Shortage Areas (HPSAs) impacting the medical services offered and the manner in which they are delivered.

The varying types of health plans operating in the state further complicate the situation. The presence of large national organizations, hospital district plans, Medicaid plans, and small local plans illustrate this complexity and require contracting flexibility. Should the state attempt to mandate a contract, large national organizations would have to tailor their contract specifically for Texas and incur the costs associated with changing all of their systems support, decreasing their ability to leverage their economies of scale and resulting in costs ultimately borne by those who pay for healthcare. Alternatively, state funded plans would be at the mercy of the managed care companies through which they contract. Amendments specific to their funding arrangements, fee schedules, and benefits would be required. Re-negotiation of contracts would also have a significant impact on the size and composition of the provider networks, which may in turn affect the plans ability to provide sufficient care to its members.

Government Mandated Doctor Contracts: The Wrong Prescription for Texas

Historically, most contracts have evolved over time to contain terms which are beneficial to both parties, especially those terms that the parties deem to be salient. This trend is supported by an article which appeared in the University of Chicago Law Review in the fall of 2003. The article notes that legal and economic scholars recommend that the market determine contract terms rather than the government. The article offers that over time the market will produce a contract that has balanced terms which address those areas most important to each party. It goes on to state, “On one hand, devising a complete set of contract terms would be possible, but the unavoidable lack of tailoring would ensure that the terms would not allocate risks and responsibilities efficiently for some parties”, and “tailoring the terms (of the contract) to an infinite number of triggering factors would be a practical impossibility.”¹

Mandated doctor contracts will do little to improve the efficiency, effectiveness, and cost of physician and health plan contracting. Most key provisions are already required through current laws and regulatory requirements. Even a government mandated contract would still require some customization to adequately address specific physician practice requirements and individual health plan complexities. The administrative costs of re-contracting and addressing future modifications would be prohibitive. These expenses along with the expected increases in fees demanded by providers and the removal of market forces in the pricing of medical services would contribute to significant increases in the cost of healthcare. The adverse impact of rising healthcare costs on an employer’s ability to provide benefits and the resulting consequences to the state’s uninsured population could be substantial.

The Texas Association of Health Plans supports contract change through conventional market forces rather than government action. With no justifiable benefit for the increased costs and administrative complexities that would accompany government regulated medical contracts, the adoption of such a proposal is an unnecessary, intrusive, and unfunded intervention by government into private contractual arrangements. Such a move is inconsistent with the nation’s desire to expand access to care while containing its cost.



Sources

¹ R. Korbkin, Bounded Rationality, Standard Form Contracts and Unconscionability. University of Chicago Law Review, Fall 2003.