

By: Hancock

S.B. No. 507

A BILL TO BE ENTITLED

AN ACT

relating to mediation of the settlement of certain out-of-network health benefit claims involving balance billing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1467.001, Insurance Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (2-a), (3-a), and (4-a) to read as follows:

(1) "Administrator" means:

(A) an administering firm for a health benefit plan providing coverage under Chapter 1551, 1575, or 1579; and

(B) if applicable, the claims administrator for the health benefit plan.

(2-a) "Emergency care provider" means a physician, health care practitioner, facility, or other health care provider who provides and bills an enrollee, administrator, or health benefit plan for emergency care.

(3) "Enrollee" means an individual who is eligible to receive benefits through a preferred provider benefit plan or a health benefit plan under Chapter 1551, 1575, or 1579.

(3-a) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(4) "Facility-based provider [~~physician~~]" means a physician, health care practitioner, or other health care provider [~~radiologist, an anesthesiologist, a pathologist, an emergency~~]

1 ~~department physician, a neonatologist, or an assistant surgeon:~~

2 ~~[(A) to whom the facility has granted clinical~~
3 ~~privileges; and~~

4 ~~[(B)]~~ who provides health care or medical
5 services to patients of a [the] facility ~~[under those clinical~~
6 ~~privileges]~~.

7 (4-a) "Health care practitioner" means an individual
8 who is licensed to provide health care services.

9 (5) "Mediation" means a process in which an impartial
10 mediator facilitates and promotes agreement between the insurer
11 offering a preferred provider benefit plan or the administrator and
12 a facility-based provider or emergency care provider ~~[physician]~~ or
13 the provider's ~~[physician's]~~ representative to settle a health
14 benefit claim of an enrollee.

15 (7) "Party" means an insurer offering a preferred
16 provider benefit plan, an administrator, or a facility-based
17 provider or emergency care provider ~~[physician]~~ or the provider's
18 ~~[physician's]~~ representative who participates in a mediation
19 conducted under this chapter. The enrollee is also considered a
20 party to the mediation.

21 SECTION 2. Section [1467.002](#), Insurance Code, is amended to
22 read as follows:

23 Sec. 1467.002. APPLICABILITY OF CHAPTER. This chapter
24 applies to:

25 (1) a preferred provider benefit plan offered by an
26 insurer under Chapter [1301](#); and

27 (2) an administrator of a health benefit plan, other

1 than a health maintenance organization plan, under Chapter 1551,
2 1575, or 1579.

3 SECTION 3. Section 1467.003, Insurance Code, is amended to
4 read as follows:

5 Sec. 1467.003. RULES. The commissioner, the Texas Medical
6 Board, any other appropriate regulatory agency, and the chief
7 administrative law judge shall adopt rules as necessary to
8 implement their respective powers and duties under this chapter.

9 SECTION 4. Section 1467.005, Insurance Code, is amended to
10 read as follows:

11 Sec. 1467.005. REFORM. This chapter may not be construed to
12 prohibit:

13 (1) an insurer offering a preferred provider benefit
14 plan or administrator from, at any time, offering a reformed claim
15 settlement; or

16 (2) a facility-based provider or emergency care
17 provider [~~physician~~] from, at any time, offering a reformed charge
18 for health care or medical services.

19 SECTION 5. Section 1467.051, Insurance Code, is amended to
20 read as follows:

21 Sec. 1467.051. AVAILABILITY OF MANDATORY MEDIATION;
22 EXCEPTION. (a) An enrollee may request mediation of a settlement
23 of an out-of-network health benefit claim if:

24 (1) the amount for which the enrollee is responsible
25 to a facility-based provider or emergency care provider
26 [~~physician~~], after copayments, deductibles, and coinsurance,
27 including the amount unpaid by the administrator or insurer, is

1 greater than \$500; and

2 (2) the health benefit claim is for:

3 (A) emergency care; or

4 (B) a health care or medical service or supply
5 provided by a facility-based provider [~~physician~~] in a facility
6 [~~hospital~~] that is a preferred provider or that has a contract with
7 the administrator.

8 (b) Except as provided by Subsections (c) and (d), if an
9 enrollee requests mediation under this subchapter, the
10 facility-based provider or emergency care provider, [~~physician~~] or
11 the provider's [~~physician's~~] representative, and the insurer or the
12 administrator, as appropriate, shall participate in the mediation.

13 (c) Except in the case of an emergency and if requested by
14 the enrollee, a facility-based provider [~~physician~~] shall, before
15 providing a health care or medical service or supply, provide a
16 complete disclosure to an enrollee that:

17 (1) explains that the facility-based provider
18 [~~physician~~] does not have a contract with the enrollee's health
19 benefit plan;

20 (2) discloses projected amounts for which the enrollee
21 may be responsible; and

22 (3) discloses the circumstances under which the
23 enrollee would be responsible for those amounts.

24 (d) A facility-based provider [~~physician~~] who makes a
25 disclosure under Subsection (c) and obtains the enrollee's written
26 acknowledgment of that disclosure may not be required to mediate a
27 billed charge under this subchapter if the amount billed is less

1 than or equal to the maximum amount projected in the disclosure.

2 (e) A bill sent to an enrollee by a facility-based provider
3 or emergency care provider for an out-of-network health benefit
4 claim eligible for mediation under this chapter must contain, in
5 not less than 10-point boldface type, a conspicuous, plain-language
6 explanation of the mediation process available under this chapter,
7 including information on how to request mediation and a statement
8 substantially similar to the following: "This statement is a
9 balance bill for out-of-network services that may be eligible for
10 mediation. You may obtain more information at
11 www.tdi.texas.gov/consumer/cpmmediation.html."

12 SECTION 6. Section 1467.052(c), Insurance Code, is amended
13 to read as follows:

14 (c) A person may not act as mediator for a claim settlement
15 dispute if the person has been employed by, consulted for, or
16 otherwise had a business relationship with an insurer offering the
17 preferred provider benefit plan or a physician, health care
18 practitioner, or other health care provider during the three years
19 immediately preceding the request for mediation.

20 SECTION 7. Section 1467.053(d), Insurance Code, is amended
21 to read as follows:

22 (d) The mediator's fees shall be split evenly and paid by
23 the insurer or administrator and the facility-based provider or
24 emergency care provider [~~physician~~].

25 SECTION 8. Sections 1467.054(b), (c), (d), and (e),
26 Insurance Code, are amended to read as follows:

27 (b) A request for mandatory mediation must be provided to

1 the department on a form prescribed by the commissioner and must
2 include:

- 3 (1) the name of the enrollee requesting mediation;
- 4 (2) a brief description of the claim to be mediated;
- 5 (3) contact information, including a telephone
6 number, for the requesting enrollee and the enrollee's counsel, if
7 the enrollee retains counsel;
- 8 (4) the name of the facility-based provider or
9 emergency care provider [~~physician~~] and name of the insurer or
10 administrator; and
- 11 (5) any other information the commissioner may require
12 by rule.

13 (c) On receipt of a request for mediation, the department
14 shall notify the facility-based provider or emergency care provider
15 [~~physician~~] and insurer or administrator of the request.

16 (d) In an effort to settle the claim before mediation, all
17 parties must participate in an informal settlement teleconference
18 not later than the 30th day after the date on which the enrollee
19 submits a request for mediation under this section unless otherwise
20 agreed by all parties. The facility-based provider or emergency
21 care provider and the insurer or administrator are equally
22 responsible for scheduling the informal settlement teleconference.

23 (e) A dispute to be mediated under this chapter that does
24 not settle as a result of a teleconference conducted under
25 Subsection (d) must be conducted in the county in which the health
26 care or medical services were rendered.

27 SECTION 9. Sections 1467.055(d), (g), (h), and (i),

1 Insurance Code, are amended to read as follows:

2 (d) If the enrollee is participating in the mediation in
3 person, at the beginning of the mediation the mediator shall inform
4 the enrollee that if the enrollee is not satisfied with the mediated
5 agreement, the enrollee may file a complaint with:

6 (1) the Texas Medical Board or other appropriate
7 regulatory agency against the facility-based provider or emergency
8 care provider [~~physician~~] for improper billing; and

9 (2) the department for unfair claim settlement
10 practices.

11 (g) Except at the request of an enrollee or as otherwise
12 agreed by all parties, a mediation shall be held not later than the
13 180th day after the date of the request for mediation.

14 (h) On receipt of notice from the department that an
15 enrollee has made a request for mediation that meets the
16 requirements of this chapter, the facility-based provider or
17 emergency care provider [~~physician~~] may not pursue any collection
18 effort against the enrollee who has requested mediation for amounts
19 other than copayments, deductibles, and coinsurance before the
20 earlier of:

21 (1) the date the mediation is completed; or

22 (2) the date the request to mediate is withdrawn.

23 (i) A health care or medical service provided by a
24 facility-based provider or emergency care provider [~~physician~~] may
25 not be summarily disallowed. This subsection does not require an
26 insurer or administrator to pay for an uncovered service.

27 SECTION 10. Sections [1467.056](#)(a), (b), and (d), Insurance

1 Code, are amended to read as follows:

2 (a) In a mediation under this chapter, the parties shall:

3 (1) evaluate whether:

4 (A) the amount charged by the facility-based
5 provider or emergency care provider ~~[physician]~~ for the health care
6 or medical service or supply is excessive; and

7 (B) the amount paid by the insurer or
8 administrator represents the usual and customary rate for the
9 health care or medical service or supply or is unreasonably low; and

10 (2) as a result of the amounts described by
11 Subdivision (1), determine the amount, after copayments,
12 deductibles, and coinsurance are applied, for which an enrollee is
13 responsible to the facility-based provider or emergency care
14 provider ~~[physician]~~.

15 (b) The facility-based provider or emergency care provider
16 ~~[physician]~~ may present information regarding the amount charged
17 for the health care or medical service or supply. The insurer or
18 administrator may present information regarding the amount paid by
19 the insurer or administrator.

20 (d) The goal of the mediation is to reach an agreement among
21 the enrollee, the facility-based provider or emergency care
22 provider ~~[physician]~~, and the insurer or administrator, as
23 applicable, as to the amount paid by the insurer or administrator to
24 the facility-based provider or emergency care provider
25 ~~[physician]~~, the amount charged by the facility-based provider or
26 emergency care provider ~~[physician]~~, and the amount paid to the
27 facility-based provider or emergency care provider ~~[physician]~~ by

1 the enrollee.

2 SECTION 11. Section 1467.057(a), Insurance Code, is amended
3 to read as follows:

4 (a) The mediator of an unsuccessful mediation under this
5 chapter shall report the outcome of the mediation to the
6 department, the Texas Medical Board or other appropriate regulatory
7 agency, and the chief administrative law judge.

8 SECTION 12. Section 1467.058, Insurance Code, is amended to
9 read as follows:

10 Sec. 1467.058. CONTINUATION OF MEDIATION. After a referral
11 is made under Section 1467.057, the facility-based provider or
12 emergency care provider [~~physician~~] and the insurer or
13 administrator may elect to continue the mediation to further
14 determine their responsibilities. Continuation of mediation under
15 this section does not affect the amount of the billed charge to the
16 enrollee.

17 SECTION 13. Section 1467.059, Insurance Code, is amended to
18 read as follows:

19 Sec. 1467.059. MEDIATION AGREEMENT. The mediator shall
20 prepare a confidential mediation agreement and order that states:

21 (1) the total amount for which the enrollee will be
22 responsible to the facility-based provider or emergency care
23 provider [~~physician~~], after copayments, deductibles, and
24 coinsurance; and

25 (2) any agreement reached by the parties under Section
26 1467.058.

27 SECTION 14. Section 1467.060, Insurance Code, is amended to

1 read as follows:

2 Sec. 1467.060. REPORT OF MEDIATOR. The mediator shall
3 report to the commissioner and the Texas Medical Board or other
4 appropriate regulatory agency:

5 (1) the names of the parties to the mediation; and

6 (2) whether the parties reached an agreement or the
7 mediator made a referral under Section 1467.057.

8 SECTION 15. Section 1467.101(c), Insurance Code, is amended
9 to read as follows:

10 (c) A mediator shall report bad faith mediation to the
11 commissioner or the Texas Medical Board or other regulatory agency,
12 as appropriate, following the conclusion of the mediation.

13 SECTION 16. Section 1467.151, Insurance Code, is amended to
14 read as follows:

15 Sec. 1467.151. CONSUMER PROTECTION; RULES. (a) The
16 commissioner and the Texas Medical Board or other regulatory
17 agency, as appropriate, shall adopt rules regulating the
18 investigation and review of a complaint filed that relates to the
19 settlement of an out-of-network health benefit claim that is
20 subject to this chapter. The rules adopted under this section
21 must:

22 (1) distinguish among complaints for out-of-network
23 coverage or payment and give priority to investigating allegations
24 of delayed health care or medical care;

25 (2) develop a form for filing a complaint and
26 establish an outreach effort to inform enrollees of the
27 availability of the claims dispute resolution process under this

1 chapter;

2 (3) ensure that a complaint is not dismissed without
3 appropriate consideration;

4 (4) ensure that enrollees are informed of the
5 availability of mandatory mediation; and

6 (5) require the administrator to include a notice of
7 the claims dispute resolution process available under this chapter
8 with the explanation of benefits sent to an enrollee.

9 (b) The department and the Texas Medical Board or other
10 appropriate regulatory agency shall maintain information:

11 (1) on each complaint filed that concerns a claim or
12 mediation subject to this chapter; and

13 (2) related to a claim that is the basis of an enrollee
14 complaint, including:

15 (A) the type of services that gave rise to the
16 dispute;

17 (B) the type and specialty, if any, of the
18 facility-based provider or emergency care provider [~~physician~~] who
19 provided the out-of-network service;

20 (C) the county and metropolitan area in which the
21 health care or medical service or supply was provided;

22 (D) whether the health care or medical service or
23 supply was for emergency care; and

24 (E) any other information about:

25 (i) the insurer or administrator that the
26 commissioner by rule requires; or

27 (ii) the facility-based provider or

1 emergency care provider [~~physician~~] that the Texas Medical Board or
2 other appropriate regulatory agency by rule requires.

3 (c) The information collected and maintained by the
4 department and the Texas Medical Board and other appropriate
5 regulatory agencies under Subsection (b)(2) is public information
6 as defined by Section 552.002, Government Code, and may not include
7 personally identifiable information or health care or medical
8 information.

9 (d) A facility-based provider or emergency care provider
10 [~~physician~~] who fails to provide a disclosure under Section
11 1467.051 is not subject to discipline by the Texas Medical Board or
12 other appropriate regulatory agency for that failure and a cause of
13 action is not created by a failure to disclose as required by
14 Section 1467.051.

15 SECTION 17. The changes in law made by this Act apply only
16 to a claim for health care or medical services provided on or after
17 January 1, 2018. A claim for health care or medical services
18 provided before January 1, 2018, is governed by the law in effect
19 immediately before the effective date of this Act, and that law is
20 continued in effect for that purpose.

21 SECTION 18. This Act takes effect September 1, 2017.