

By: Collier

H.B. No. 1701

A BILL TO BE ENTITLED

AN ACT

relating to administrative and judicial review of certain Medicaid reimbursement disputes; authorizing a fee.

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

SECTION 1. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0057 to read as follows:

Sec. 533.0057. CONFISCATORY REIMBURSEMENT RATES PROHIBITED; ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN REIMBURSEMENT DISPUTES. (a) In this section, "confiscatory" means, with respect to the reimbursement rate paid by a managed care organization to a provider, a rate that is below the rate necessary to:

(1) recover the provider's reasonable operating expenses;

(2) realize a reasonable return on the provider's costs; and

(3) ensure confidence in the provider's continued:

(A) financial integrity; and

(B) participation in Medicaid.

(b) A managed care organization may not pay a confiscatory reimbursement rate to a provider under a Medicaid managed care model or arrangement implemented under this chapter.

(c) Notwithstanding any other law, a provider, including a pharmacy provider, has the right to a contested case hearing under

Chapter 2001 to dispute the amount of a reimbursement rate paid to the provider by a managed care organization or the organization's pharmacy benefit manager if, subject to Subsection (f), the provider believes the rate is confiscatory in violation of Subsection (b), except that the decision of the hearing officer or the administrative law judge, as applicable, is not subject to judicial review under Chapter 2001. Solely for purposes of this section, a managed care organization is to be treated as a state agency under Chapter 2001.

(d) A contested case hearing under Subsection (c) shall be conducted by an administrative law judge, unless the commission's appeals division employs at least one full-time hearing officer whose sole duty is to preside over contested cases. If the commission's appeals division employs a hearing officer described by this subsection, that officer shall conduct the contested case hearing under Subsection (c).

(e) Parties to a contested case brought under this section:

(1) must include:

(A) the provider; and

(B) the managed care organization and any appropriate agent of the organization, including a pharmacy benefit manager; and

(2) may not include the commission.

(f) If the provider's contract with the managed care organization or the organization's agent contains a process for handling disputes relating to provider reimbursement, the provider may request a contested case hearing under Subsection (c) only if:

1 (1) the provider first submits the dispute for
2 resolution through the contractual process; and

3 (2) the managed care organization or the
4 organization's agent, as appropriate, fails to resolve the dispute
5 through the contractual process not later than the 45th day after
6 the day the dispute is submitted, or if the provider is dissatisfied
7 with the resolution of the contractual process.

8 (g) In a contested case brought under this section, the
9 hearing officer or administrative law judge, as applicable, shall
10 determine whether the reimbursement rate is confiscatory and may
11 order the managed care organization or the organization's agent to
12 pay a rate that is not confiscatory. A hearing officer or
13 administrative law judge, as applicable, may not award an amount:

14 (1) to any one provider that, as a percentage of the
15 provider's average net income before taxes, exceeds the managed
16 care organization's percentage of net income before taxes that is
17 computed in accordance with the contract between the organization
18 and the commission and is authorized to be retained by the
19 organization under that contract, averaged over all financial
20 statistical reporting periods; or

21 (2) that, in the aggregate, exceeds the amount of
22 resources maintained by the managed care organization to reasonably
23 accommodate program changes at no additional cost to the commission
24 in accordance with the contract between the organization and the
25 commission.

26 (h) In a contested case brought under this section, the
27 hearing officer or administrative law judge, as applicable, has the

1 discretion:

2 (1) considering the interest of judicial economy and
3 efficiency, to combine cases wholly or partly that involve the same
4 type of provider and the same or substantially similar
5 reimbursement issues; or

6 (2) to impose part or all of the costs for the hearing
7 against the party or parties that do not substantially prevail.

8 (i) In awarding costs in a contested case brought under this
9 section, the hearing officer or administrative law judge, as
10 applicable:

11 (1) shall consider whether the position of the party
12 was taken in good faith and had a reasonable basis in fact and law;
13 and

14 (2) may not award attorney's fees.

15 (j) The commission or the State Office of Administrative
16 Hearings may impose a fee in an amount not to exceed \$500 on each
17 party to a contested case brought under this section for the purpose
18 of offsetting the costs of the hearing.

19 SECTION 2. The change in law made by this Act applies only
20 to a reimbursement paid to a Medicaid provider on or after the
21 effective date of this Act.

22 SECTION 3. If before implementing any provision of this Act
23 a state agency determines that a waiver or authorization from a
24 federal agency is necessary for implementation of that provision,
25 the agency affected by the provision shall request the waiver or
26 authorization and may delay implementing that provision until the
27 waiver or authorization is granted.

1 SECTION 4. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2023.