

Amend SB 23, house committee printing, by inserting the following ARTICLE in the bill, appropriately numbered, and renumbering the ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . SECONDARY MARKET IN CERTAIN PHYSICIAN  
AND HEALTH CARE PROVIDER DISCOUNTS

SECTION \_\_\_\_ .01. Subtitle D, Title 8, Insurance Code, is amended by adding Chapter 1302 to read as follows:

CHAPTER 1302. REGULATION OF SECONDARY MARKET IN CERTAIN PHYSICIAN  
AND HEALTH CARE PROVIDER DISCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1302.001. DEFINITIONS. In this chapter:

(1) "Discount broker" means any entity engaged, for monetary or other consideration, in disclosing or transferring a contracted discounted fee of a physician or health care provider.

(2) "Health care provider" means a hospital, a physician-hospital organization, or an ambulatory surgical center.

(3) "Payor" means a fully self-insured health plan, a health benefit plan, an insurer, or another entity that assumes the risk for payment of claims by, or reimbursement for health care services provided by, physicians and health care providers.

(4) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, comprised entirely by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach

or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) any other person wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(5) "Transfer" means to lease, sell, aggregate, assign, or otherwise convey a contracted discounted fee of a physician or health care provider.

Sec. 1302.002. EXEMPTIONS. This chapter does not apply to:

(1) the activities of:

(A) a health maintenance organization's network that are subject to Subchapter J, Chapter 843; or

(B) an insurer's preferred provider network that are subject to Subchapters C and C-1, Chapter 1301; or

(2) any aspect of the administration or operation of:

(A) the state child health plan; or

(B) any medical assistance program using a managed care organization or managed care principal, including the state Medicaid managed care program under Chapter 533, Government Code.

Sec. 1302.003. APPLICABILITY OF OTHER LAW. (a) Except as provided by Subsection (b), with respect to payment of claims, a discount broker, and any payor for whom a discount broker acts or who contracts with a discount broker, shall comply with Subchapters C and C-1, Chapter 1301, in the same manner as an insurer.

(b) This section does not apply to a payor that is a fully self-insured health plan.

Sec. 1302.004. RETALIATION PROHIBITED. A discount broker may not engage in any retaliatory action against a physician or health care provider because the physician or provider has:

(1) filed a complaint against the discount broker; or

(2) appealed a decision of the discount broker.

[Sections 1302.005-1302.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION; POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

Sec. 1302.051. REGISTRATION REQUIRED. Each discount broker that does not hold a certificate of authority or license otherwise

issued by the department under this code must register with the department in the manner prescribed by the commissioner before engaging in business in this state.

Sec. 1302.052. RULES. The commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement and administer this chapter.

[Sections 1302.053-1302.100 reserved for expansion]

SUBCHAPTER C. PROHIBITION OF CERTAIN TRANSFERS;

NOTICE REQUIREMENTS

Sec. 1302.101. PROHIBITION OF CERTAIN TRANSFERS. (a) A discount broker may not transfer a physician's or health care provider's contracted discounted fee or any other contractual obligation unless the transfer is authorized by a contractual agreement that complies with this chapter.

(b) This section does not affect the authority of the commissioner of insurance or the commissioner of workers' compensation under this code or Title 5, Labor Code, to request and obtain information.

Sec. 1302.102. IDENTIFICATION OF PAYORS; TERMINATION OF CONTRACT. (a) A discount broker shall notify each physician and health care provider of the identity of the payors and discount brokers authorized to access a contracted discounted fee of the physician or provider. The notice requirement under this subsection does not apply to an employer authorized to access a discounted fee through a discount broker.

(b) The notice required under Subsection (a) must:

(1) be provided, at least every 45 days, through:

(A) electronic mail, after provision by the affected physician or health care provider of a current electronic mail address; and

(B) posting of a list on a secure Internet website; and

(2) include a separate prominent section that lists the payors that the discount broker knows will have access to a discounted fee of the physician or health care provider in the succeeding 45-day period.

(b-1) Notwithstanding Subsection (b), and on the request of

the affected physician or health care provider, the notice required under Subsection (a) may be provided through United States mail. This subsection expires September 1, 2009.

(c) The identity of a payor or discount broker authorized to access a contracted discounted fee of the physician or provider that becomes known to the discount broker required to submit the notice under Subsection (a) must be included in the subsequent notice.

(d) If, after receipt of the notice required under Subsection (a), a physician or health care provider objects to the addition of a payor to access to a discounted fee, other than a payor that is an employer or a discount broker listed in the notice required under Subsection (a), the physician or health care provider may terminate its contract by providing written notice to the discount broker not later than the 30th day after the date on which the physician or health care provider receives the notice required under Subsection (a). Termination of a contract under this subsection is subject to applicable continuity of care requirements under Section 843.362 and Subchapter D, Chapter 1301.

[Sections 1302.103-1302.150 reserved for expansion]

#### SUBCHAPTER D. RESTRICTIONS ON TRANSFERS

Sec. 1302.151. RESTRICTIONS ON TRANSFERS; EXCEPTION. (a) In this section, "line of business" includes noninsurance plans, fully self-insured health plans, Medicare Advantage plans, and personal injury protection under an automobile insurance policy.

(b) A contract between a discount broker and a physician or health care provider may not require the physician or health care provider to:

(1) consent to the disclosure or transfer of the physician's or health care provider's name and a contracted discounted fee for use with more than one line of business;

(2) accept all insurance products; or

(3) consent to the disclosure or transfer of the physician's or health care provider's name and access to a contracted discounted fee of the physician or provider in a chain of transfers that exceeds two transfers.

(c) Notwithstanding Subsection (b)(2), a contract between a

discount broker and a physician or health care provider may require the physician or health care provider to accept all insurance products within a line of business covered by the contract.

[Sections 1302.152-1302.199 reserved for expansion]

SUBCHAPTER E. DISCLOSURE REQUIREMENTS

Sec. 1302.200. IMPLEMENTATION. (a) This subchapter takes effect January 1, 2008.

(b) This section expires January 2, 2008.

Sec. 1302.201. IDENTIFICATION OF DISCOUNT BROKER. An explanation of payment or remittance advice in an electronic or paper format must include the identity of the discount broker authorized to disclose or transfer the name and associated discounts of a physician or health care provider.

Sec. 1302.202. IDENTIFICATION OF ENTITY ASSUMING FINANCIAL RISK; DISCOUNT BROKER. A payor or representative of a payor that processes claims or claims payments must clearly identify in an electronic or paper format on the explanation of payment or remittance advice the identity of:

(1) the payor that assumes the risk for payment of claims or reimbursement for services; and

(2) the discount broker through which the payment rate and any discount are claimed.

Sec. 1302.203. INFORMATION ON IDENTIFICATION CARDS. If a discount broker or payor issues member or subscriber identification cards, the identification cards must identify, in a clear and legible manner, any third-party entity, including any discount broker:

(1) who is responsible for paying claims; and

(2) through whom the payment rate and any discount are claimed.

[Sections 1302.204-1302.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 1302.251. PENALTIES. (a) A discount broker who holds a certificate of authority or license under this code and who violates this chapter:

(1) commits an unfair settlement practice in violation of Chapter 541;

(2) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542; and

(3) is subject to administrative penalties in the manner prescribed by Chapters 82 and 84.

(b) A violation of this chapter by a discount broker who does not hold a certificate of authority or license under this code constitutes a violation of Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 1302.252. PRIVATE CAUSE OF ACTION. An affected physician or health care provider may bring a private action for damages in the manner prescribed by Subchapter D, Chapter 541, against a discount broker who violates this chapter.

SECTION\_\_\_\_.02. Sections 1301.001(4) and (6), Insurance Code, are amended to read as follows:

(4) "Institutional provider" means a hospital, nursing home, or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy. The term includes an ambulatory surgical center.

(6) "Physician" means:

(A) an individual [a person] licensed to practice medicine in this state under the authority of Title 3, Subtitle B, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, comprised entirely by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts

with physicians in a practice plan; or

(F) any other person wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

SECTION \_\_\_\_ .03. Section 1301.056, Insurance Code, is amended to read as follows:

Sec. 1301.056. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT.

(a) An insurer, ~~[or]~~ third-party administrator, or other entity may not reimburse a physician or other practitioner, institutional provider, or organization of physicians and health care providers on a discounted fee basis for covered services that are provided to an insured unless:

(1) the insurer, ~~[or]~~ third-party administrator, or other entity has contracted with either:

(A) the physician or other practitioner, institutional provider, or organization of physicians and health care providers; or

(B) a preferred provider organization that has a network of preferred providers and that has contracted with the physician or other practitioner, institutional provider, or organization of physicians and health care providers;

(2) the physician or other practitioner, institutional provider, or organization of physicians and health care providers has agreed to the contract and has agreed to provide health care services under the terms of the contract; and

(3) the insurer, ~~[or]~~ third-party administrator, or other entity has agreed to provide coverage for those health care services under the health insurance policy.

(b) A party to a preferred provider contract, including a contract with a preferred provider organization, may not sell, lease, assign, aggregate, disclose, or otherwise transfer the discounted fee, or any other information regarding the discount, payment, or reimbursement terms of the contract without the express authority of and ~~[prior]~~ adequate notification to the other contracting parties. This subsection does not:

(1) prohibit a payor from disclosing any information, including fees, to an insured; or

(2) affect the authority of the commissioner of insurance or the commissioner of workers' compensation under this code or Title 5, Labor Code, to request and obtain information.

(c) An insurer, third-party administrator, or other entity may not access a discounted fee, other than through a direct contract, unless notice has been provided to the contracted physicians, practitioners, institutional providers, and organizations of physicians and health care providers. For the purposes of the notice requirements of this subsection, the term "other entity" does not include an employer that contracts with an insurer or third-party administrator.

(d) The notice required under Subsection (c) must:

(1) be provided, at least every 45 days, through:

(A) electronic mail, after provision by the affected physician or health care provider of a current electronic mail address; and

(B) posting of a list on a secure Internet website; and

(2) include a separate prominent section that lists the insurers, third-party administrators, or other entities that the contracting party knows will have access to a discounted fee of the physician or health care provider in the succeeding 45-day period.

(d-1) Notwithstanding Subsection (d), and on the request of the affected physician or health care provider, the notice required under Subsection (c) may be provided through United States mail. This subsection expires September 1, 2009.

(e) The identity of an insurer, third-party administrator, or other entity authorized to access a contracted discounted fee of the physician or provider that becomes known to the contracting party required to submit the notice under Subsection (c) must be included in the subsequent notice.

(f) If, after receipt of the notice required under Subsection (c), a physician or other practitioner, institutional provider, or organization of physicians and health care providers objects to the addition of an insurer, third-party administrator, or other entity to access to a discounted fee, the physician or



other practitioner, institutional provider, or organization of physicians and health care providers may terminate its contract by providing written notice to the contracting party not later than the 30th day after the date of the receipt of the notice required under Subsection (c).

(g) An insurer, third-party administrator, or other entity that processes claims or claims payments shall clearly identify in an electronic or paper format on the explanation of payment or remittance advice:

(1) the identity of the party responsible for administering the claims; and

(2) if the insurer, third-party administrator, or other entity does not have a direct contract with the physician or other practitioner, institutional provider, or organization of physicians and health care providers, the identity of the preferred provider organization or other contracting party that authorized a discounted fee.

(h) If an insurer, third-party administrator, or other entity issues member or insured identification cards, the identification cards must include, in a clear and legible format, the information required under Subsection (g).

(i) An insurer, ~~or~~ third-party administrator, or other entity that holds a certificate of authority or license under this code who violates this section:

(1) commits an unfair settlement practice in violation of Chapter 541;

(2) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542; and

(3) ~~(2)~~ is subject to administrative penalties under Chapters 82 and 84.

(j) A violation of this section by an entity described by this section who does not hold a certificate of authority or license issued under this code constitutes a violation of Subchapter E, Chapter 17, Business & Commerce Code.

(k) A physician or health care provider affected by a violation of this section may bring a private action for damages in the manner prescribed by Subchapter D, Chapter 541, against a

discount broker who violates this section.

SECTION \_\_\_\_\_.04. The change in law made by this Article applies only to a cause of action that accrues on or after the effective date of this Article. A cause of action that accrues before that date is governed by the law as it existed immediately before the effective date of this Article, and that law is continued in effect for that purpose.

SECTION \_\_\_\_\_.05. The commissioner of insurance shall adopt rules as necessary to implement Chapter 1302, Insurance Code, as added by this Article, not later than December 1, 2007.

SECTION \_\_\_\_\_.06. This Article applies only to a contract entered into or renewed on or after January 1, 2008. A contract entered into or renewed before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Article, and that law is continued in effect for that purpose.

SECTION \_\_\_\_\_.07. This Article takes effect September 1, 2007.