

By: Eiland

H.B. No. 839

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the secondary market in certain physician discounts.

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

SECTION 1. Subtitle D, Title 8, Insurance Code, is amended by adding Chapter 1302 to read as follows:

CHAPTER 1302. REGULATION OF SECONDARY MARKET IN PHYSICIAN

DISCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1302.001. PURPOSE. (a) The legislature finds that the unregulated secondary market in physician discounts is not only increasingly sophisticated, but has evolved in a part of the system that lacks transparency.

(b) The legislature also finds that the number of intermediary entities involved in the health care claims payment process is increasing dramatically. Rental network preferred provider organizations exist to market a physician's contractually discounted rates primarily to third-party payers, such as insurance brokers, third-party administrators, local or regional preferred provider organizations, or self-insured employers. A rental network preferred provider organization may also rent its networks and associated discounts to entities such as network brokers, repricers, or aggregators, whose sole purpose is finding and applying the lowest discounted rates, often without physician

1 authorization. Many of these entities provide no value and exist
2 for the sole purpose of trafficking in physician discounts.

3 (c) The legislature also finds that in this era of
4 consumer-driven health care, patients are having an increasingly
5 difficult time assessing the true cost of their health care. While
6 the discounter profits from covertly undercutting the appropriate
7 payment to the physician, it shares little if any information
8 regarding its actions with the patient or the physician. Without
9 this information, it becomes extremely difficult for an individual
10 physician to determine how much the physician is to be paid for a
11 particular health care service and by whom, and for a patient to
12 determine the patient's share of the cost of the patient's health
13 care. As a result, the patient often pays a greater portion of the
14 total bill and the third-party payer ends up paying less.

15 (d) The legislature declares that regulating the secondary
16 market in physician discounts is the only way to ensure that:

17 (1) patients have accurate real-time information at
18 their disposal necessary to make critical well-informed decisions
19 relating to the spending of their health care dollars; and

20 (2) physicians have more control over their practice
21 environment.

22 Sec. 1302.002. DEFINITIONS. In this chapter:

23 (1) "Contracting agent" means a covered entity
24 engaged, for monetary or other consideration, in leasing, selling,
25 transferring, aggregating, assigning, or otherwise conveying a
26 physician or physician panel to provide health care services to
27 beneficiaries.

1 as necessary to implement and administer this chapter.

2 [Sections 1302.053-1302.100 reserved for expansion]

3 SUBCHAPTER C. CONTRACT BETWEEN PHYSICIAN AND CONTRACTING AGENT;

4 CONTRACT REQUIREMENTS

5 Sec. 1302.101. GENERAL CONTRACT REQUIREMENTS. (a) Each
6 contract between a physician and a contracting agent must comply
7 with the requirements of this chapter and rules adopted by the
8 commissioner.

9 (b) The contract must include all terms material to the
10 contract and be consistent with state law. Each amendment made to
11 an original contract must be identified and highlighted.

12 (c) A contract between a contracting agent and a physician
13 may not supersede the requirements of this chapter or Chapter 1301.

14 Sec. 1302.102. IDENTIFICATION OF PAYERS. (a) In a
15 separate section of a contract between a physician and a
16 contracting agent, the contract must clearly name each payer
17 eligible to claim a discounted rate under the contract.

18 (b) To be eligible to claim a discounted rate, directly or
19 indirectly, after execution of a contract, a payer must be added to
20 the contract through a separate amendment to the contract that is
21 signed by the affected physician. The contract amendment must be
22 presented to the physician for the physician's signature not later
23 than the 90th day before the date of any anticipated disclosure,
24 lease, sale, transfer, aggregation, assignment, or conveyance to
25 the payer of the physician's discounted rate.

26 Sec. 1302.103. RIGHTS OF PHYSICIAN. (a) A contract
27 between a physician and a contracting agent must contain a

1 provision stating the right of the physician, without any penalty,
2 sanction, or retaliation, to affirmatively opt in or opt out of each
3 agreement to lease, sell, transfer, aggregate, assign, or otherwise
4 convey the physician or a physician panel and associated discounts.

5 (b) The contract must state the physician's contracting and
6 payment rights, as specified by Chapter 1301, other provisions of
7 this code, and commissioner rule.

8 (c) The contract may not authorize or require the physician
9 to consent to the sale of the physician's name and contracted rates:

10 (1) for use with more than a single product or line of
11 business; or

12 (2) more than once.

13 Sec. 1302.104. OBLIGATION OF PAYER OR COVERED ENTITY. (a)
14 A payer or covered entity may not disclose, lease, sell, transfer,
15 aggregate, assign, or otherwise convey a physician or physician
16 panel and associated discounts obtained under a contract with a
17 contracting agent to any other payer or entity.

18 (b) A contract entered into between the contracting agent
19 and a payer or other covered entity must state the requirements of
20 Subsection (a) and a contract between a physician and a contracting
21 agent must state that the contracting agent is bound by the
22 requirements of this subsection.

23 Sec. 1302.105. USE OF PHYSICIAN'S CONTRACTED RATE. A
24 payer, payer representative, administrator of claims payment, or
25 other third party acting on behalf of a payer may not claim or
26 otherwise offer a physician's specific contracted rate for services
27 except to the extent that the rate:

1 (1) is based on the contract that directly controls
2 payment for services provided to that patient; and

3 (2) is stated on the explanation of benefits or
4 remittance advice and on any patient identification card issued to
5 the patient.

6 Sec. 1302.106. TERMINATION OF CONTRACT; NOTICE. (a) On
7 termination of a contract between a physician and a contracting
8 agent, the contracting agent shall notify each payer or covered
9 entity that the payer or covered entity:

10 (1) is no longer authorized to access the physician's
11 discounted rate; and

12 (2) may not disclose, lease, sell, transfer,
13 aggregate, assign, or otherwise convey the physician's discounted
14 rate.

15 (b) A contracting agent shall require each payer or covered
16 entity that is by contract eligible to claim a physician's
17 discounted rates to cease claiming those rates on termination of:

18 (1) the underlying contract between the contracting
19 agent and the physician; or

20 (2) the physician's authorization for the payer or
21 covered entity to pay the contracted reimbursement rate as
22 permitted under the terms of the contract between the contracting
23 agent and the physician.

24 (c) A contract between a physician and a contracting agent
25 must state the requirements of this section.

26 [Sections 1302.107-1302.150 reserved for expansion]

1 SUBCHAPTER D. RIGHTS AND DUTIES OF CONTRACTING AGENT

2 Sec. 1302.151. CONTRACTING AGENT RIGHTS AND DUTIES. (a) A
3 contracting agent that proposes to sell, lease, assign, transfer,
4 or otherwise convey a physician's name, discounted rate, or any
5 other information must have a direct contract with the affected
6 physician.

7 (b) The contract between the contracting agent and a
8 physician must fully disclose any access fee or other remuneration
9 the contracting agent may receive and the specific benefits and
10 service the contracting agent will provide.

11 (c) A contracting agent shall ensure through contract terms
12 that each payer or covered entity to which the agent has leased,
13 sold, transferred, aggregated, assigned, or otherwise conveyed a
14 physician or physician panel and any associated discounts:

15 (1) complies with the underlying contract between the
16 contracting agent and the physician; and

17 (2) pays the physician according to the rates of
18 payment and methodology established in the underlying contract.

19 Sec. 1302.152. PROHIBITED CONVEYANCE. A contracting agent
20 may not lease, sell, transfer, aggregate, assign, or otherwise
21 convey a physician, physician panel, or any associated discounts or
22 any other contractual obligation to any entity that is not a payer
23 or covered entity.

24 Sec. 1302.153. CONTRACTING AGENT DUTIES ON NONCOMPLIANCE.
25 After receiving written notice from a contracted physician that a
26 payer or covered entity to whom a contracting agent has leased,
27 sold, transferred, aggregated, assigned, or otherwise conveyed a

1 physician, physician panel, and any associated discounts is not
2 complying with the terms of the underlying contract between the
3 contracting agent and a physician, including compliance with
4 statutory requirements for timely and accurate payment of claims,
5 and the contracted physician has fulfilled the applicable appeal or
6 grievance process without satisfaction, the contracting agent
7 shall, not later than the 45th day after the date of receipt of the
8 physician's notice:

9 (1) ensure the payer or covered entity:

10 (A) causes correct payment to be made to the
11 physician; and

12 (B) otherwise complies with the terms of the
13 underlying contract; or

14 (2) terminate the contracting agent's agreement with
15 that payer or covered entity and assume direct responsibility for
16 the payment of the claim in question by paying the physician the
17 amount owed under the contract in the manner required by state law.

18 [Sections 1302.154-1302.199 reserved for expansion]

19 SUBCHAPTER E. DISCLOSURE REQUIREMENTS

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

22 (b) This section expires January 2, 2008.

23 Sec. 1302.201. IDENTIFICATION OF ENTITY MAKING CONVEYANCE.
24 An explanation of benefits or remittance advice in an electronic or
25 paper format must include the identity of the contracting agent or
26 other entity authorized to have leased, sold, transferred,
27 aggregated, assigned, or otherwise conveyed the physician's name

1 and associated discounts.

2 Sec. 1302.202. IDENTIFICATION OF ENTITY ASSUMING FINANCIAL
3 RISK; CONTRACTING AGENT. (a) A payer, representative of a payer,
4 or covered entity, that processes claims or claims payments shall
5 clearly identify in an electronic or paper format on the
6 explanation of benefits or remittance advice:

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

9 (2) the identity of the contracting agent through
10 which the payment rate and any discount are claimed.

11 (b) A copy of the contract between the contracting agent and
12 payer or covered entity must be provided to the physician on
13 request.

14 Sec. 1302.203. INFORMATION ON IDENTIFICATION CARDS. If a
15 covered entity, contracting agent, or payer issues member or
16 subscriber identification cards, the identification cards must
17 identify, in a clear and legible manner, any third-party entity,
18 including any contracting agent:

19 (1) who is responsible for paying claims; or

20 (2) whose contract with a payer or covered entity
21 controls or otherwise affects reimbursement for claims filed
22 according to the subscriber contract.

23 [Sections 1302.204-1302.250 reserved for expansion]

24 SUBCHAPTER F. ENFORCEMENT

25 Sec. 1302.251. CEASE AND DESIST ORDER; ADMINISTRATIVE
26 PENALTIES. On determining that a contracting agent, insurer, or
27 other entity is operating in violation of this chapter, the

1 commissioner may:

2 (1) issue and enforce a cease and desist order in the
3 manner prescribed by Subchapters B and C, Chapter 83, to prevent the
4 violation; and

5 (2) impose administrative penalties under Chapter 84.

6 Sec. 1302.252. ADMINISTRATIVE PROCEDURE; REMEDIES. (a) A
7 person aggrieved by a violation of this chapter may apply to the
8 department for relief for a violation of the person's rights under
9 this chapter. The person is entitled to an administrative hearing
10 in the manner prescribed by Subchapter A, Chapter 40.

11 (b) Remedies under this section may include the recoupment
12 of payments lost by a physician due to an unauthorized agreement to
13 lease, sell, transfer, aggregate, assign, or otherwise convey the
14 physician, a physician panel, and associated discounts in violation
15 of this chapter.

16 SECTION 2. Section 1301.004, Insurance Code, is amended to
17 read as follows:

18 Sec. 1301.004. COMPLIANCE [~~WITH CHAPTER~~] REQUIRED. Each
19 preferred provider benefit plan offered in this state must comply
20 with this chapter and Chapter 1302.

21 SECTION 3. The commissioner of insurance shall adopt rules
22 as necessary to implement Chapter 1302, Insurance Code, as added by
23 this Act, not later than December 1, 2007.

24 SECTION 4. This Act applies only to a contract entered into
25 or renewed on or after January 1, 2008. A contract entered into or
26 renewed before January 1, 2008, is governed by the law as it existed
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 SECTION 5. This Act takes effect September 1, 2007.