

By: Hancock, Martinez Fischer, Rodriguez,  
Smith of Tarrant, et al.

H.B. No. 2256

Substitute the following for H.B. No. 2256:

By: Hancock

C.S.H.B. No. 2256

A BILL TO BE ENTITLED

AN ACT

relating to mediation of out-of-network health benefit claim  
disputes concerning enrollees, facility-based physicians, and  
certain health benefit plans; imposing an administrative penalty.

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

SECTION 1. Subtitle F, Title 8, Insurance Code, is amended  
by adding Chapter 1467 to read as follows:

CHAPTER 1467. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1467.001. DEFINITIONS. In this chapter:

(1) "Administrator" means:

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

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

(2) "Chief administrative law judge" means the chief  
administrative law judge of the State Office of Administrative  
Hearings.

(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.

(4) "Facility-based physician" means a radiologist,  
an anesthesiologist, a pathologist, an emergency department  
physician, or a neonatologist:

1           (A) to whom the facility has granted clinical  
2 privileges; and

3           (B) who provides services to patients of the  
4 facility under those clinical privileges.

5           (5) "Mediation" means a process in which an impartial  
6 mediator facilitates and promotes agreement between the insurer  
7 offering a preferred provider benefit plan or the administrator and  
8 a facility-based physician to settle a health benefit claim of an  
9 enrollee.

10          (6) "Mediator" means an impartial person who is  
11 appointed to conduct a mediation under this chapter.

12          (7) "Party" means an insurer offering a preferred  
13 provider benefit plan, an administrator, or a facility-based  
14 physician who participates in a mediation conducted under this  
15 chapter. The enrollee is also considered a party to the mediation.

16          Sec. 1467.002. APPLICABILITY OF CHAPTER. This chapter  
17 applies to:

18           (1) a preferred provider benefit plan offered by an  
19 insurer under Chapter 1301; and

20           (2) an administrator of a health benefit plan, other  
21 than a health maintenance organization plan, under Chapter 1551.

22          Sec. 1467.003. RULES. The commissioner, the Texas Medical  
23 Board, and the chief administrative law judge shall adopt rules as  
24 necessary to implement their respective powers and duties under  
25 this chapter.

26          Sec. 1467.004. REMEDIES NOT EXCLUSIVE. The remedies  
27 provided by this chapter are in addition to any other defense,

1 remedy, or procedure provided by law, including the common law.

2 Sec. 1467.005. REFORM. This chapter may not be construed to  
3 prohibit:

4 (1) an insurer offering a preferred provider benefit  
5 plan or administrator from, at any time, offering a reformed claim  
6 settlement; or

7 (2) a facility-based physician from, at any time,  
8 offering a reformed charge for medical services.

9 [Sections 1467.006-1467.050 reserved for expansion]

10 SUBCHAPTER B. MANDATORY MEDIATION

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

14 (1) the amount for which the enrollee is responsible  
15 to a facility-based physician, after copayments, deductibles, and  
16 coinsurance, including the amount unpaid by the administrator or  
17 insurer, is greater than \$500; and

18 (2) the health benefit claim is for a medical service  
19 or supply provided by a facility-based physician in a hospital that  
20 is a preferred provider or that has a contract with the  
21 administrator.

22 (b) Except as provided by Subsections (c) and (d), if an  
23 enrollee requests mediation under this subchapter, the  
24 facility-based physician and the insurer or the administrator, as  
25 appropriate, shall participate in the mediation.

26 (c) A facility-based physician may, before providing a  
27 medical service or supply, provide a complete disclosure to an

1 enrollee that:

2 (1) explains that the facility-based physician does  
3 not have a contract with the enrollee's health benefit plan;

4 (2) discloses specific amounts for which the enrollee  
5 may be responsible; and

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

8 (d) A facility-based physician who makes a disclosure under  
9 Subsection (c) and obtains the enrollee's written acknowledgment of  
10 that disclosure may not be required to mediate a billed charge under  
11 this subchapter if the amount billed is less than or equal to the  
12 maximum amount stated in the disclosure.

13 Sec. 1467.052. MEDIATOR QUALIFICATIONS. (a) Except as  
14 provided by Subsection (b), to qualify for an appointment as a  
15 mediator under this chapter a person must have completed at least 40  
16 classroom hours of training in dispute resolution techniques in a  
17 course conducted by an alternative dispute resolution organization  
18 or other dispute resolution organization approved by the chief  
19 administrative law judge.

20 (b) A person not qualified under Subsection (a) may be  
21 appointed as a mediator on agreement of the parties.

22 (c) A person may not act as mediator for a claim settlement  
23 dispute if the person has been employed by, consulted for, or  
24 otherwise had a business relationship with an insurer offering the  
25 preferred provider benefit plan or a physician during the three  
26 years immediately preceding the request for mediation.

27 Sec. 1467.053. APPOINTMENT OF MEDIATOR; FEES. (a) A

1 mediation shall be conducted by one mediator.

2 (b) The chief administrative law judge shall appoint the  
3 mediator through a random assignment from a list of qualified  
4 mediators maintained by the State Office of Administrative  
5 Hearings.

6 (c) Notwithstanding Subsection (b), a person other than a  
7 mediator appointed by the chief administrative law judge may  
8 conduct the mediation on agreement of all of the parties and notice  
9 to the chief administrative law judge.

10 (d) The mediator's fees shall be split evenly and paid by  
11 the insurer or administrator and the facility-based physician.

12 Sec. 1467.054. REQUEST AND PRELIMINARY PROCEDURES FOR  
13 MANDATORY MEDIATION. (a) An enrollee may request mandatory  
14 mediation under this chapter.

15 (b) A request for mandatory mediation must be provided to  
16 the department on a form prescribed by the commissioner and must  
17 include:

18 (1) the name of the enrollee requesting mediation;  
19 (2) a brief description of the claim to be mediated;  
20 (3) contact information, including a telephone  
21 number, for the requesting enrollee and the enrollee's counsel, if  
22 the enrollee retains counsel;

23 (4) the name of the facility-based physician and name  
24 of the insurer or administrator; and

25 (5) any other information the commissioner may require  
26 by rule.

27 (c) On receipt of a request for mediation, the department

1 shall notify the facility-based physician and insurer or  
2 administrator of the request.

3 (d) In an effort to settle the claim before mediation, all  
4 parties must participate in an informal settlement teleconference  
5 not later than the 30th day after the date on which the enrollee  
6 submits a request for mediation under this section.

7 (e) A dispute to be mediated under this chapter that does  
8 not settle as a result of a teleconference conducted under  
9 Subsection (d) must be conducted in the county in which the medical  
10 services were rendered.

11 (f) The enrollee may elect to participate in the mediation.  
12 A mediation may not proceed without the consent of the enrollee. An  
13 enrollee may withdraw the request for mediation at any time before  
14 the mediation.

15 (g) Notwithstanding Subsection (f), mediation may proceed  
16 without the participation of the enrollee or the enrollee's  
17 representative if the enrollee or representative is not present in  
18 person or through teleconference.

19 Sec. 1467.055. CONDUCT OF MEDIATION; CONFIDENTIALITY. (a)  
20 Except as provided by Sections 1467.056 and 1467.057, a mediator  
21 may not impose the mediator's judgment on a party about an issue  
22 that is a subject of the mediation.

23 (b) A mediation session is under the control of the  
24 mediator.

25 (c) Except as provided by this chapter, the mediator must  
26 hold in strict confidence all information provided to the mediator  
27 by a party and all communications of the mediator with a party.

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

5           (1) the Texas Medical Board against the facility-based  
6 physician for improper billing; and

7           (2) the department for unfair claim settlement  
8 practices.

9       (e) A party must have an opportunity during the mediation to  
10 speak and state the party's position.

11       (f) Except on the agreement of the participating parties, a  
12 mediation may not last more than four hours.

13       (g) Except at the request of an enrollee, a mediation shall  
14 be held not later than the 180th day after the date of the request  
15 for mediation.

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

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

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

24       (i) A service provided by a facility-based physician may not  
25 be summarily disallowed. This subsection does not require an  
26 insurer or administrator to pay for an uncovered service.

27       (j) A mediator may not testify in a proceeding, other than a

1 proceeding to enforce this chapter, related to the mediation  
2 agreement.

3 Sec. 1467.056. MATTERS CONSIDERED IN MEDIATION; AGREED  
4 RESOLUTION. (a) In a mediation under this chapter, the parties  
5 shall evaluate whether:

6 (1) the amount charged by the facility-based physician  
7 for the medical service or supply is excessive;

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

11 (3) the amount for which an enrollee will be  
12 responsible to the facility-based physician, after copayments,  
13 deductibles, and coinsurance is excessive.

14 (b) The facility-based physician may present information to  
15 justify the amount charged for the medical service or supply. The  
16 insurer or administrator may present information to justify the  
17 amount paid by the insurer.

18 (c) The goal of the mediation is to obtain agreement between  
19 the facility-based physician and the insurer or administrator, as  
20 appropriate, as to the amount to be charged by the physician and  
21 paid by the insurer or administrator to the facility-based  
22 physician.

23 Sec. 1467.057. NO AGREED RESOLUTION. (a) The mediator of an  
24 unsuccessful mediation under this chapter shall report the outcome  
25 of the mediation to the department, the Texas Medical Board, and the  
26 chief administrative law judge.

27 (b) The chief administrative law judge shall enter an order



1 of referral of a matter reported under Subsection (a) to a special  
2 judge under Chapter 151, Civil Practice and Remedies Code, that:

3 (1) names the special judge on whom the parties agreed  
4 or appoints the special judge if the parties did not agree on a  
5 judge;

6 (2) states the issues to be referred and the time and  
7 place on which the parties agree for the trial;

8 (3) requires each party to pay the party's  
9 proportionate share of the special judge's fee; and

10 (4) certifies that the parties have waived the right  
11 to trial by jury.

12 (c) A trial by the special judge selected or appointed as  
13 described by Subsection (b) must proceed under Chapter 151, Civil  
14 Practice and Remedies Code, except that the special judge's verdict  
15 is not relevant or material to any other balance bill dispute and  
16 has no precedential value.

17 Sec. 1467.058. CONTINUATION OF MEDIATION. After a referral  
18 is made under Section 1467.057, the facility-based physician and  
19 the insurer or administrator may elect to continue the mediation to  
20 further determine their responsibilities. Continuation of  
21 mediation under this section does not affect the amount of the  
22 billed charge to the enrollee.

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

25 (1) the total amount for which the enrollee will be  
26 responsible to the facility-based physician, after copayments,  
27 deductibles, and coinsurance; and

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

3           Sec. 1467.060. REPORT OF MEDIATOR. The mediator shall  
4 report to the commissioner and the Texas Medical Board:

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           [Sections 1467.061-1467.100 reserved for expansion]

9                   SUBCHAPTER C. BAD FAITH MEDIATION

10          Sec. 1467.101. BAD FAITH. (a) The following conduct  
11 constitutes bad faith mediation for purposes of this chapter:

12           (1) failing to participate in the mediation;

13           (2) failing to provide information the mediator  
14 believes is necessary to facilitate an agreement; or

15           (3) failing to designate a representative  
16 participating in the mediation with full authority to enter into  
17 any mediated agreement.

18          (b) Failure to reach an agreement is not conclusive proof of  
19 bad faith mediation.

20          (c) A mediator shall report bad faith mediation to the  
21 commissioner or the Texas Medical Board, as appropriate, following  
22 the conclusion of the mediation.

23          Sec. 1467.102. PENALTIES. (a) Bad faith mediation, by a  
24 party other than the enrollee, is grounds for imposition of an  
25 administrative penalty by the regulatory agency that issued a  
26 license or certificate of authority to the party who committed the  
27 violation.

1       (b) Except for good cause shown, on a report of a mediator  
2 and appropriate proof of bad faith mediation, the regulatory agency  
3 that issued the license or certificate of authority shall impose an  
4 administrative penalty.

5           [Sections 1467.103-1467.150 reserved for expansion]

6           SUBCHAPTER D. COMPLAINTS; CONSUMER PROTECTION

7       Sec. 1467.151. CONSUMER PROTECTION; RULES. (a) The  
8 commissioner and the Texas Medical Board, as appropriate, shall  
9 adopt rules regulating the investigation and review of a complaint  
10 filed that relates to the settlement of an out-of-network health  
11 benefit claim that is subject to this chapter. The rules adopted  
12 under this section must:

13           (1) distinguish among complaints for out-of-network  
14 coverage or payment and give priority to investigating allegations  
15 of delayed medical care;

16           (2) develop a form for filing a complaint and  
17 establish an outreach effort to inform enrollees of the  
18 availability of the claims dispute resolution process under this  
19 chapter;

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

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

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

27       (b) The department and the Texas Medical Board shall

1 maintain information:

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

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

6 (A) the type of services that gave rise to the  
7 dispute;

8 (B) the type and specialty of the facility-based  
9 physician who provided the out-of-network service;

10 (C) the county and metropolitan area in which the  
11 medical service or supply was provided;

12 (D) whether the medical service or supply was for  
13 emergency care; and

14 (E) any other information about the insurer or  
15 administrator the commissioner or the Texas Medical Board by rule  
16 may require.

17 (c) The information collected and maintained by the  
18 department and the Texas Medical Board under Subsection (b)(2) is  
19 public information as defined by Section 552.002, Government Code,  
20 and may not include personally identifiable information or medical  
21 information.

22 SECTION 2. Subchapter A, Chapter 1301, Insurance Code, is  
23 amended by adding Sections 1301.0055 and 1301.0056 to read as  
24 follows:

25 Sec. 1301.0055. NETWORK ADEQUACY STANDARDS. The  
26 commissioner shall by rule adopt network adequacy standards that  
27 are adapted to local markets in which an insurer offering a

1 preferred provider benefit plan operates. The rules must include  
2 standards that ensure availability of, and accessibility to, a full  
3 range of health care practitioners to provide health care services  
4 to insureds.

5 Sec. 1301.0056. REIMBURSEMENT REPORTING. (a) An insurer  
6 offering a preferred provider benefit plan must submit to the  
7 department, as prescribed by the commissioner, information  
8 regarding:

9 (1) the methods used by the insurer to compute  
10 out-of-network reimbursements, such as a maximum allowable amount;  
11 and

12 (2) the effect of the computation described by  
13 Subdivision (1) on the out-of-pocket expenses of an insured.

14 (b) The commissioner shall establish by rule the  
15 information required under Subsection (a).

16 SECTION 3. Section 1456.004, Insurance Code, is amended by  
17 adding Subsection (c) to read as follows:

18 (c) A facility-based physician who bills a patient covered  
19 by a preferred provider benefit plan or a health benefit plan under  
20 Chapter 1551 that does not have a contract with the facility-based  
21 physician shall send a billing statement to the patient with  
22 information sufficient to notify the patient of the mandatory  
23 mediation process available under Chapter 1467 if the amount for  
24 which the enrollee is responsible, after copayments, deductibles,  
25 and coinsurance, including the amount unpaid by the administrator  
26 or insurer, is greater than \$500.

27 SECTION 4. Chapter 1456, Insurance Code, is amended by

1 adding Section 1456.0045 to read as follows:

2 Sec. 1456.0045. REQUIRED DISCLOSURE: FACILITIES. A health  
3 care facility shall provide to each patient to be admitted to, or  
4 who is expected to receive services from, the facility a list  
5 containing the name and contact information for each facility-based  
6 physician with privileges to provide medical services at the  
7 facility. The list shall also inform patients that facility-based  
8 physicians may not have a contract with the health benefit plan with  
9 which the facility has a contract. The list must also inform  
10 patients they may receive a bill for medical services from  
11 facility-based physicians for those amounts unpaid by the patient's  
12 health benefit plan.

13 SECTION 5. This Act applies only to a health benefit claim  
14 filed on or after the effective date of this Act. A claim filed  
15 before the effective date of this Act is governed by the law as it  
16 existed immediately before the effective date of this Act, and that  
17 law is continued in effect for that purpose.

18 SECTION 6. As soon as practicable after the effective date  
19 of this Act, the commissioner of insurance, Texas Medical Board,  
20 and chief administrative law judge of the State Office of  
21 Administrative Hearings shall adopt rules as necessary to implement  
22 and enforce this Act.

23 SECTION 7. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2009.