

By: Hinojosa

S.B. No. 556

A BILL TO BE ENTITLED

AN ACT

relating to requirements for certain contracts with physicians and health care providers.

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

SECTION 1. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1459 to read as follows:

CHAPTER 1459. REQUIREMENTS FOR CERTAIN CONTRACTS WITH PHYSICIANS
AND HEALTH CARE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1459.001. GENERAL DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Edit" means a practice or procedure under which an adjustment is made regarding procedure codes that results in:

(A) payment for some, but not all, of the health care procedures performed under a procedure code;

(B) payment made under a different procedure code;

(C) a reduced payment as a result of services provided to a patient that are claimed under more than one procedure code on the same service date;

(D) a reduced payment related to a modifier used with a procedure code; or

(E) a reduced payment based on multiple units of the same procedure code billed for a single date of service.

1 (2) "Health benefit plan issuer" means an insurance
2 company, association, organization, group hospital service
3 corporation, or health maintenance organization that delivers or
4 issues for delivery an individual, group, blanket, or franchise
5 insurance policy or insurance agreement, a group hospital service
6 contract, or an evidence of coverage that provides health insurance
7 or health care benefits. The term includes:

8 (A) a life, health, and accident insurance
9 company operating under Chapter 841 or 982;

10 (B) a general casualty insurance company
11 operating under Chapter 861;

12 (C) a fraternal benefit society operating under
13 Chapter 885;

14 (D) a mutual life insurance company operating
15 under Chapter 882;

16 (E) a local mutual aid association operating
17 under Chapter 886;

18 (F) a statewide mutual assessment company
19 operating under Chapter 881;

20 (G) a mutual assessment company or mutual
21 assessment life, health, and accident association operating under
22 Chapter 887;

23 (H) a mutual insurance company operating under
24 Chapter 883 that writes coverage other than life insurance;

25 (I) a Lloyd's plan operating under Chapter 941;

26 (J) a reciprocal exchange operating under
27 Chapter 942; and

1 (K) a stipulated premium company operating under
2 Chapter 884.

3 (3) "Health care contract" means a contract entered
4 into or renewed between a health care contractor and a physician or
5 health care provider for the delivery of health care services to
6 others.

7 (4) "Health care contractor" means an individual or
8 entity whose primary business purpose consists of contracting with
9 physicians or health care providers for the delivery of health care
10 services. The term includes a health benefit plan issuer and an
11 administrator regulated under Chapter 4151.

12 (5) "Health care provider" means:

13 (A) an individual licensed or certified in this
14 state to practice pharmacy, chiropractic, nursing, physical
15 therapy, podiatry, dentistry, optometry, occupational therapy, or
16 another healing art; and

17 (B) an ambulatory surgical center or a licensed
18 pharmacy.

19 (6) "Line of business" means one of the following
20 products offered by or administered by a health care contractor:

21 (A) a health care plan offered by a health
22 maintenance organization;

23 (B) any other contract for the delivery of health
24 care services;

25 (C) Medicare coverage;

26 (D) Medicaid coverage;

27 (E) health care provided under a workers'

1 compensation insurance policy; or

2 (F) the state child health plan.

3 (7) "Physician" means:

4 (A) an individual licensed to engage in the
5 practice of medicine in this state; or

6 (B) an entity organized under Subchapter B,
7 Chapter 162, Occupations Code.

8 (8) "Procedure code" means an alphanumeric code used
9 to identify a specific health procedure performed by a health care
10 provider. The term includes:

11 (A) the American Medical Association's Current
12 Procedural Terminology code, also known as the "CPT code";

13 (B) the Centers for Medicare and Medicaid
14 Services Health Care Common Procedure Coding System; and

15 (C) other analogous codes published by national
16 organizations and recognized by the commissioner.

17 Sec. 1459.002. DEFINITION OF MATERIAL CHANGE. For purposes
18 of this chapter, a "material change" means a change to a contract
19 that decreases the physician's or health care provider's payment or
20 compensation, changes the administrative procedures required under
21 the contract in a way that increases the provider's administrative
22 expense, or adds coverage for a new line of business.

23 Sec. 1459.003. APPLICABILITY OF CHAPTER. (a) This chapter
24 does not apply to:

25 (1) an exclusive contract with a single medical group
26 in a specific geographic area to provide or arrange for health care
27 services;

1 (2) an employment contract or arrangement between
2 physicians or health care providers;

3 (3) a contract or arrangement entered into by a
4 hospital or health care facility, other than an ambulatory surgical
5 center or a licensed pharmacy, that is licensed or certified under
6 state law; or

7 (4) contracts for pharmacy benefit management,
8 including a contract with a pharmacy benefit manager under
9 Subchapter D, Chapter 4151.

10 (b) Notwithstanding Subsection (a)(1) or (2), this chapter
11 applies to contracts for health care services between a medical
12 group and other medical groups.

13 (c) Notwithstanding Subsection (a)(4), this chapter applies
14 to a contract for health care services between a health care
15 contractor and a pharmacy, a pharmacist, or a professional
16 corporation composed of pharmacies or pharmacists as permitted by
17 the laws of this state.

18 Sec. 1459.004. CODE OF ETHICS; DISCRIMINATION LAWS. This
19 chapter may not be used to justify any act or omission by a
20 physician or health care provider that is prohibited by any
21 applicable professional code of ethics or a state or federal law
22 prohibiting discrimination against any person.

23 [Sections 1459.005-1459.050 reserved for expansion]

24 SUBCHAPTER B. GENERAL CONTRACT REQUIREMENTS

25 Sec. 1459.051. REQUIREMENTS FOR REIMBURSEMENT ON
26 DISCOUNTED FEE BASIS. (a) A health care contractor may not
27 reimburse a physician or health care provider on a discounted fee

1 basis for covered services furnished to a covered person unless:

2 (1) the health care contractor has directly contracted
3 with the physician or provider and:

4 (A) the physician or provider:

5 (i) has agreed in writing to the terms of
6 the contract for specific payors; and

7 (ii) has agreed in writing to provide
8 health care services under the terms of the contract;

9 (B) the health care contractor has agreed in
10 writing to provide coverage for those health care services under
11 the terms of the health benefit plan; and

12 (C) the contract was in effect at the time the
13 physician or provider furnished the covered services to the
14 insured;

15 (2) the health care contractor has contracted with a
16 preferred provider organization and:

17 (A) the preferred provider organization has
18 directly contracted with the physician or provider;

19 (B) the physician or provider has agreed in
20 writing to the terms of the contract and has agreed in writing to
21 provide health care services under the terms of the contract; and

22 (C) the physician or provider has actual prior
23 notice of the specific payors who may access the contract rate; or

24 (3) the health care contractor has contracted with:

25 (A) any other entity and:

26 (i) the entity has indirectly contracted
27 with the provider;

1 (ii) the physician or provider has agreed
2 in writing to the terms of the contract and has agreed in writing to
3 provide health care services under the terms of the contract; and

4 (iii) the health care contractor can
5 demonstrate that the contractor furnished the physician or
6 provider, before the date on which the contract rate is purchased,
7 leased, or accessed, written notice of the specific contractor's or
8 other entity's right to access the contract rate under a specific
9 contract, and, as applicable, underlying contracts, by
10 demonstrating submission of the notice in compliance with
11 Subsection (b); or

12 (B) a preferred provider organization that has
13 contracted with any other entity and:

14 (i) the entity has directly or indirectly
15 contracted with the provider;

16 (ii) the physician or health care provider
17 has agreed in writing to the terms of the provider contract and has
18 agreed in writing to provide health care services under the terms of
19 the contract; and

20 (iii) the health care contractor can
21 demonstrate that the contractor furnished the physician or health
22 care provider, before the date on which the contract rate is
23 purchased, leased, or accessed, written notice of the specific
24 contractor's right to access the contract rate under a specific
25 preferred provider organization contract, and, as applicable,
26 underlying contracts, by demonstrating submission of the notice in
27 compliance with Subsection (b).

1 (b) A health care contractor is presumed to have submitted
2 timely notice of the contractor's right to reimburse the physician
3 or health care provider on a discounted fee basis for covered
4 services furnished to a covered person if the contractor submits a
5 notice to the physician or provider, before the date on which the
6 contractor purchases the discount, that contains the following:

7 (1) the name of the preferred provider organization or
8 other entity that has the direct contract with the physician or
9 provider;

10 (2) the date of the contract; and

11 (3) the address to which the physician or provider may
12 send a letter terminating the contract.

13 (c) The notice required by Subsection (b) may be provided:

14 (1) by United States mail, sent first class, return
15 receipt requested, or by overnight delivery;

16 (2) electronically, if the health care contractor
17 maintains proof of the electronic submission;

18 (3) by facsimile transmission, if the physician or
19 health care provider accepts facsimile transmissions for the type
20 of notice being sent and the health care contractor maintains proof
21 of the transmission; or

22 (4) by hand delivery, if the health care contractor
23 maintains proof of the delivery.

24 Sec. 1459.052. WAIVER OF CERTAIN RIGHTS PROHIBITED. Except
25 as permitted by this chapter, a health care contractor may not
26 require, as a condition of contracting, that a physician or health
27 care provider waive any right or benefit to which the physician or

1 health care provider may be entitled under a state or federal law or
2 regulation that provides legal protections to a person solely based
3 on the person's status as a physician or health care provider
4 providing services in this state.

5 Sec. 1459.053. EFFECT ON NEW PATIENTS. (a) In this
6 section, "new patient" means an individual who has not received
7 services from a physician or health care provider in the three years
8 immediately preceding the date of the notice under Subsection (b).
9 A patient does not become a "new patient" solely by changing
10 coverage from one health care contractor to another.

11 (b) On 60 days' notice, a physician or health care provider
12 may decline to provide service under a health care contract to new
13 patients covered by the health care contractor. The notice must
14 state the reasons for the declination.

15 Sec. 1459.054. EFFECT OF CONTRACT TERMINATION. A contract
16 provision concerning compensation or payment of a physician or
17 health care provider does not survive the termination of a health
18 care contract, other than a provision for continuation of coverage
19 required by law or made with the agreement of the physician or
20 health care provider.

21 Sec. 1459.055. DISCLOSURE TO THIRD PARTY. A health care
22 contract may not preclude the use of the contract or disclosure of
23 the contract to a third party to enforce this chapter or other state
24 or federal law. The third party is bound by any applicable
25 confidentiality requirements, including those stated in the
26 contract.

27 Sec. 1459.056. RIGHT TO TERMINATE CONTRACT. In addition to

1 termination rights described under Section 1459.152, a health care
2 contract must provide to each party a right to terminate the
3 contract without cause on at least 90 days' written notice.

4 Sec. 1459.057. ARBITRATION AGREEMENTS. A health care
5 contract subject to this chapter may include an agreement for
6 binding arbitration.

7 Sec. 1459.058. ENFORCEMENT. (a) With respect to the
8 enforcement of this chapter, including enforcement through
9 arbitration, a physician or health care provider:

10 (1) may exercise private rights of action at law and in
11 equity;

12 (2) is entitled to equitable relief, including
13 injunctive relief;

14 (3) is entitled to reasonable attorney's fees when the
15 physician or health care provider is the prevailing party in an
16 action to enforce this chapter, except to the extent that the
17 violation of this chapter consisted of a mere failure to make
18 payment under a contract; and

19 (4) may introduce as persuasive authority prior
20 arbitration awards regarding a violation of this chapter.

21 (b) An arbitration award related to the enforcement of this
22 chapter may be disclosed to persons who have a bona fide interest in
23 the arbitration.

24 [Sections 1459.059-1459.100 reserved for expansion]

25 SUBCHAPTER C. DISCLOSURE OF CONTRACT CHANGES

26 Sec. 1459.101. NOTICE REGARDING CHANGE TO CONTRACT. (a) A
27 health care contractor must notify each physician and health care

1 provider affected by a change to a health care contract of the
2 change. The notice must include information sufficient for the
3 physician or health care provider to determine the effect of the
4 change.

5 (b) A change to a health care contract that is
6 administrative only takes effect on the date stated in the notice,
7 which may not be earlier than the 30th day after the date of the
8 notice.

9 (c) A health care contractor shall provide notice regarding
10 a material change in the manner prescribed by Section 1459.102 and
11 the contract.

12 Sec. 1459.102. MATERIAL CHANGES; NOTICE. (a) A material
13 change to a contract may be implemented only if the health care
14 contractor provides written notice to the affected physician or
15 health care provider regarding the proposed change at least 90 days
16 before the effective date of the change. The notice must be
17 conspicuously entitled "Notice of Material Change to Contract."

18 (b) If the physician or health care provider does not object
19 to the material change, the change takes effect in the manner
20 specified in the notice of material change to the contract made
21 under Subsection (a).

22 (c) If the physician or health care provider objects to the
23 material change not later than the 30th day after the date of the
24 notice under Subsection (a), the change does not take effect, and
25 the objection does not constitute a basis on which the health care
26 contractor may terminate the contract.

27 [Sections 1459.103-1459.150 reserved for expansion]

1 SUBCHAPTER D. DISCLOSURE OF OTHER INFORMATION

2 Sec. 1459.151. SUMMARY DISCLOSURE FORM. (a) Each health
3 care contract must include a summary disclosure form that states,
4 in plain language, the following information:

5 (1) the terms of the contract governing compensation
6 and payment;

7 (2) any line of business for which the physician or
8 health care provider is to provide services;

9 (3) the duration of the contract and how the contract
10 may be terminated;

11 (4) the identity of the health care contractor
12 responsible for the processing of the physician's or health care
13 provider's claims for compensation or payment;

14 (5) any internal mechanism required by the health care
15 contractor to resolve disputes that arise under the terms or
16 conditions of the contract;

17 (6) the subject and order of any addenda to the
18 contract; and

19 (7) other information as required by this subchapter.

20 (b) The disclosure form is for informational purposes only
21 and may not be construed as a term or condition of the contract.

22 (c) The disclosure form must reasonably summarize the
23 applicable contract provisions.

24 Sec. 1459.152. TERMINATION INFORMATION. (a) A health care
25 contract that provides for termination for cause by either party
26 must state the reasons that may be grounds for termination for
27 cause. The terms must be reasonable.

1 (b) The contract must state the time by which notice of
2 termination for cause must be provided and to whom the notice must
3 be given.

4 Sec. 1459.153. INFORMATION REGARDING UTILIZATION REVIEW
5 AND RELATED PROGRAMS. A health care contractor shall identify any
6 utilization review program or management program, quality
7 improvement program, or similar program that the contractor uses to
8 review, monitor, evaluate, or assess the services provided under a
9 contract.

10 Sec. 1459.154. COMPENSATION INFORMATION; FEE SCHEDULES.

11 (a) The disclosure of payment and compensation terms under
12 Sections 1459.151-1459.153 must include information sufficient for
13 a physician or health care provider to determine the compensation
14 or payment for the physician's or provider's services.

15 (b) The summary disclosure form under Section 1459.151 must
16 include:

17 (1) the manner of payment, such as fee-for-service,
18 capitation, or risk sharing;

19 (2) the methodology used to compute any fee schedule,
20 such as use of a relative value unit system and conversion factor,
21 percentage of Medicare payment system, or percentage of billed
22 charges;

23 (3) the fee schedule for procedure codes reasonably
24 expected to be billed by the physician or health care provider for
25 services provided under the contract and, on request, the fee
26 schedule for other procedure codes used by, or which may be used by,
27 the physician or health care provider; and

1 (4) the effect of edits, if any, on payment or
2 compensation.

3 (c) As applicable, the methodology disclosure under
4 Subsection (b)(2) must include:

5 (1) the name of any relative value system used;

6 (2) the version, edition, or publication date of that
7 system;

8 (3) any applicable conversion or geographic factors;
9 and

10 (4) the date by which compensation or fee schedules
11 may be changed by the methodology, if allowed under the contract.

12 (d) The fee schedule described by Subsection (b)(3) must
13 include, as applicable, service or procedure codes and the
14 associated payment or compensation for each code. The fee schedule
15 may be provided electronically.

16 (e) The health care contractor shall provide the fee
17 schedule described by Subsection (b)(3) to an affected physician or
18 health care provider when a material change related to payment or
19 compensation occurs. Additionally, a physician or health care
20 provider may request that a written fee schedule be provided up to
21 twice annually, and the health care contractor must provide the
22 written fee schedule promptly.

23 (f) A health care contractor may satisfy the requirement
24 under Subsection (b)(4) regarding the effect of edits by providing
25 a clearly understandable, readily available mechanism that allows a
26 physician or health care provider to determine the effect of an
27 edit on payment or compensation before a service is provided or a

1 claim is submitted.

2 Sec. 1459.155. REQUIRED INFORMATION AFTER CLAIM
3 PROCESSING. On completion of processing of a claim, a health care
4 contractor shall provide information to the affected physician or
5 health care provider stating how the claim was adjudicated and the
6 responsibility of any party other than the contractor for any
7 outstanding balance.

8 Sec. 1459.156. PROPOSED CONTRACT; CONFIDENTIALITY. (a) If
9 a proposed contract is presented by a health care contractor for
10 consideration by a physician or health care provider, the
11 contractor shall provide in writing or make reasonably available
12 the information required under Section 1459.154. If the
13 information is not disclosed in writing, the information must be
14 disclosed in a manner that allows the physician or health care
15 provider to timely evaluate the proposed payment or compensation
16 for services under the contract.

17 (b) The disclosure obligations under this chapter do not
18 prevent a health care contractor from requiring a reasonable
19 confidentiality agreement regarding the terms of a proposed
20 contract.

21 (c) Notwithstanding Subsections (a) and (b), a contract may
22 be modified by operation of law as required by any applicable state
23 or federal law or regulation, and the health care contractor may
24 disclose this change by any reasonable means.

25 SECTION 2. (a) A health care contractor that contracts with
26 a physician or health care provider is required to comply with
27 Chapter 1459, Insurance Code, as added by this Act, beginning on

1 January 1, 2010, and shall include the provisions required by that
2 chapter in each health care contract entered into or renewed on or
3 after that date.

4 (b) A health care contract in existence before January 1,
5 2010, must comply with the disclosure requirements of Sections
6 1459.151, 1459.153, 1459.154, and 1459.155, Insurance Code, as
7 added by this Act, not later than January 31, 2010. Chapter 1459,
8 Insurance Code, as added by this Act, may not be construed to
9 require the renegotiation of a contract in existence before January
10 1, 2010.

11 SECTION 3. This Act takes effect September 1, 2009.