

By: Van de Putte

S.B. No. 714

A BILL TO BE ENTITLED

AN ACT

1
2 relating to regulation of the secondary market in certain physician
3 and health care provider discounts; providing administrative
4 penalties.

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

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

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

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 1302.001. DEFINITIONS. In this chapter:

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

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

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

21 (4) "Physician" means:

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

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

5 (C) a partnership organized in conformity with
6 Title 4, Business Organizations Code, comprised entirely by
7 individuals licensed to practice medicine under Subtitle B, Title
8 3, Occupations Code;

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

11 (E) a medical school or medical and dental unit,
12 as defined or described by Section 61.003, 61.501, or 74.501,
13 Education Code, that employs or contracts with physicians to teach
14 or provide medical services or employs physicians and contracts
15 with physicians in a practice plan; or

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

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

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

23 (1) the activities of:

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

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

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

2 (A) the state child health plan; or

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

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

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

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

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

18 (2) appealed a decision of the discount broker.

19 [Sections 1302.005-1302.050 reserved for expansion]

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

22 Sec. 1302.051. REGISTRATION REQUIRED. Each discount broker
23 that does not hold a certificate of authority or license otherwise
24 issued by the department under this code must register with the
25 department in the manner prescribed by the commissioner before
26 engaging in business in this state.

27 Sec. 1302.052. RULES. The commissioner shall adopt rules

1 in the manner prescribed by Subchapter A, Chapter 36, as necessary
2 to implement and administer this chapter.

3 [Sections 1302.053-1302.100 reserved for expansion]

4 SUBCHAPTER C. PROHIBITION OF CERTAIN TRANSFERS;

5 NOTICE REQUIREMENTS

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

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

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

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

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

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

27 (B) posting of a list on a secure Internet

1 website; and

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

6 (b-1) Notwithstanding Subsection (b), and on the request of
7 the affected physician or health care provider, the notice required
8 under Subsection (a) may be provided through United States mail.
9 This subsection expires September 1, 2011.

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

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

26 [Sections 1302.103-1302.150 reserved for expansion]

1 SUBCHAPTER D. RESTRICTIONS ON TRANSFERS

2 Sec. 1302.151. RESTRICTIONS ON TRANSFERS; EXCEPTION. (a)

3 In this section, "line of business" includes noninsurance plans,
4 fully self-insured health plans, Medicare Advantage plans, and
5 personal injury protection under an automobile insurance policy.

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

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

12 (2) accept all insurance products; or

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

17 (c) Notwithstanding Subsection (b)(2), a contract between a
18 discount broker and a physician or health care provider may require
19 the physician or health care provider to accept all insurance
20 products within a line of business covered by the contract.

21 [Sections 1302.152-1302.199 reserved for expansion]

22 SUBCHAPTER E. DISCLOSURE REQUIREMENTS

23 Sec. 1302.200. IMPLEMENTATION. (a) This subchapter takes
24 effect January 1, 2010.

25 (b) This section expires January 2, 2010.

26 Sec. 1302.201. IDENTIFICATION OF DISCOUNT BROKER. An
27 explanation of payment or remittance advice in an electronic or

1 paper format must include the identity of the discount broker
2 authorized to disclose or transfer the name and associated
3 discounts of a physician or health care provider.

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

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

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

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

18 (1) who is responsible for paying claims; and

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

21 [Sections 1302.204-1302.250 reserved for expansion]

22 SUBCHAPTER F. ENFORCEMENT

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

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

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

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

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

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

13 SECTION 2. Sections 1301.001(4) and (6), Insurance Code,
14 are amended to read as follows:

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

20 (6) "Physician" means:

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

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

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

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

7 (E) a medical school or medical and dental unit,
8 as defined or described by Section 61.003, 61.501, or 74.501,
9 Education Code, that employs or contracts with physicians to teach
10 or provide medical services or employs physicians and contracts
11 with physicians in a practice plan; or

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

15 SECTION 3. Section 1301.056, Insurance Code, is amended to
16 read as follows:

17 Sec. 1301.056. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT.

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

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

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

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

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

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

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

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

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

24 (c) An insurer, third-party administrator, or other entity
25 may not access a discounted fee, other than through a direct
26 contract, unless notice has been provided to the contracted
27 physicians, practitioners, institutional providers, and

1 organizations of physicians and health care providers. For the
2 purposes of the notice requirements of this subsection, the term
3 "other entity" does not include an employer that contracts with an
4 insurer or third-party administrator.

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

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

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

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

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

17 (d-1) Notwithstanding Subsection (d), and on the request of
18 the affected physician or health care provider, the notice required
19 under Subsection (c) may be provided through United States mail.
20 This subsection expires September 1, 2011.

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

26 (f) If, after receipt of the notice required under
27 Subsection (c), a physician or other practitioner, institutional

1 provider, or organization of physicians and health care providers
2 objects to the addition of an insurer, third-party administrator,
3 or other entity to access to a discounted fee, the physician or
4 other practitioner, institutional provider, or organization of
5 physicians and health care providers may terminate its contract by
6 providing written notice to the contracting party not later than
7 the 30th day after the date of the receipt of the notice required
8 under Subsection (c).

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

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

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

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

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

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

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

5 (3) [~~2~~] is subject to administrative penalties
6 under Chapters 82 and 84.

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

11 (k) A physician or health care provider affected by a
12 violation of this section may bring a private action for damages in
13 the manner prescribed by Subchapter D, Chapter 541, against a
14 discount broker who violates this section.

15 SECTION 4. The change in law made by this Act applies only
16 to a cause of action that accrues on or after the effective date of
17 this Act. A cause of action that accrues before that date is
18 governed by the law as it existed immediately before the effective
19 date of this Act, and that law is continued in effect for that
20 purpose.

21 SECTION 5. 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, 2009.

24 SECTION 6. This Act applies only to a contract entered into
25 or renewed on or after January 1, 2010. A contract entered into or
26 renewed before January 1, 2010, 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 7. This Act takes effect September 1, 2009.