

By: Smithee

H.B. No. 2336

A BILL TO BE ENTITLED

AN ACT

relating to payment of and disclosures related to certain ambulatory surgical center charges.

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

SECTION 1. Chapter 1301, Insurance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PAYMENT OF OUT-OF-NETWORK AMBULATORY SURGICAL CENTER CHARGES

Sec. 1301.251. DEFINITIONS. In this subchapter:

(1) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code.

(2) "Database provider" means a database provider certified by the department under Section 1301.256.

(3) "Out-of-network ambulatory surgical center," with respect to a preferred provider benefit plan, means an ambulatory surgical center that is not a preferred provider of the plan.

(4) "Purchaser" means an insured under a preferred provider benefit plan, regardless of whether the insured pays any part of the insured's premium, and a sponsor of the preferred provider benefit plan, regardless of whether the sponsor pays any part of an insured's premium.

(5) "Usual and customary charge" means a charge for a service that is not higher than the 75th percentile of the charges for that service reported to a database provider by ambulatory

1 surgical centers in the same Medicare region, computed after  
2 excluding:

3 (A) charges discounted under a governmental or  
4 nongovernmental health benefit plan; and

5 (B) the top and bottom 10 percent of reported  
6 charges for that service for the region that are not discounted  
7 under a health benefit plan.

8 Sec. 1301.252. APPLICABILITY OF SUBCHAPTER. This  
9 subchapter applies only to an insurer that issues a preferred  
10 provider benefit plan that provides benefits for services provided  
11 by out-of-network ambulatory surgical centers.

12 Sec. 1301.253. PAYMENT OF CERTAIN OUT-OF-NETWORK  
13 AMBULATORY SURGICAL CENTERS. (a) An insurer must use a  
14 charge-based methodology that complies with this subchapter for  
15 computing a payment for a service provided by an out-of-network  
16 ambulatory surgical center if the ambulatory surgical center  
17 submits a claim for payment that includes a certification of the  
18 maximum usual and customary charge for the service determined by a  
19 database provider.

20 (b) If an out-of-network ambulatory surgical center submits  
21 a claim for payment of a charge that includes a certification from a  
22 database provider indicating that the billed charge is a usual and  
23 customary charge, the insurer shall pay the billed charge minus any  
24 portion of the charge that is the insured's responsibility under  
25 the preferred provider benefit plan.

26 (c) If an out-of-network ambulatory surgical center submits  
27 a claim for payment of a charge that includes a certification from a

1 database provider indicating that the billed charge is higher than  
2 the maximum usual and customary charge, the insurer shall pay the  
3 billed charge minus any portion of the charge that is the insured's  
4 responsibility under the preferred provider benefit plan if the  
5 billed charge is justifiable considering special circumstances  
6 under which the services are provided. If the charge is not  
7 justifiable considering special circumstances under which the  
8 services are provided, the insurer shall pay the maximum usual and  
9 customary charge minus any portion of the charge that is the  
10 insured's responsibility under the preferred provider benefit  
11 plan.

12 Sec. 1301.254. PROMPT PAYMENT OF USUAL AND CUSTOMARY  
13 CHARGE. If an out-of-network ambulatory surgical center submits a  
14 claim for payment of a charge that includes a certification from a  
15 database provider indicating that the charge is a usual and  
16 customary charge and the claim for payment is otherwise made in  
17 accordance with Subchapter C:

18 (1) the claim must be paid in accordance with  
19 Subchapter C as if the ambulatory surgical center were a preferred  
20 provider; and

21 (2) if the insurer fails to pay the claim in accordance  
22 with this section:

23 (A) the ambulatory surgical center is entitled to  
24 any remedy under this chapter to which a preferred provider would be  
25 entitled for the insurer's failure to pay the claim in accordance  
26 with Subchapter C; and

27 (B) the insurer is subject to any penalty or

1 disciplinary action under this code to which the insurer would be  
2 subject for the insurer's failure to pay the claim in accordance  
3 with Subchapter C.

4 Sec. 1301.255. REQUIRED CONTRACT TERMS. The language used  
5 in the preferred provider benefit plan policy, certificate, or  
6 contract to describe the benefit provided under the preferred  
7 provider benefit plan for services provided by an out-of-network  
8 ambulatory surgical center:

9 (1) must:

10 (A) provide that payment to an out-of-network  
11 ambulatory surgical center will be computed based on the billed  
12 charge if the charge:

13 (i) is a usual and customary charge; or

14 (ii) is not a usual and customary charge but  
15 is justifiable considering special circumstances of the services  
16 provided;

17 (B) define "usual and customary charge" as that  
18 term is defined by Section 1301.251; and

19 (C) incorporate into the definition of "usual and  
20 customary charge" the definition of "database provider" assigned by  
21 Section 1301.251; and

22 (2) may not add or subtract language from a definition  
23 required by this section.

24 Sec. 1301.256. CERTIFICATION AND QUALIFICATIONS OF  
25 DATABASE PROVIDER AND DATABASE. (a) A database provider that is  
26 used to determine usual and customary charges for the purposes of  
27 this subchapter must be certified by the department. The

1 department may certify a database provider under this subchapter  
2 only if the department determines that the database provider and  
3 the database used by the provider for the purposes of this  
4 subchapter comply with this section.

5 (b) A database provider must be an entity that:

6 (1) has been operating and based in this state for at  
7 least 10 years;

8 (2) has compiled out-of-network charges for  
9 ambulatory surgical centers in this state for at least seven years;

10 (3) maintains a database with content that complies  
11 with this section;

12 (4) maintains an active Internet website accessible to  
13 all ambulatory surgical centers subscribing to the database and to  
14 the public; and

15 (5) demonstrates an ability to:

16 (A) maintain a compilation of charge data that is  
17 absent any data required to be excluded under Subsection (e)(1);  
18 and

19 (B) distinguish charges that are not related to  
20 one another and eliminate irrelevant or erroneous charges from  
21 reported charge information.

22 (c) The database provider must compute usual and customary  
23 charges for services provided by ambulatory surgical centers in  
24 accordance with this subchapter.

25 (d) The data in the database must contain out-of-network  
26 charges for:

27 (1) at least 350,000 out-of-network billed charges

1 from ambulatory surgical centers in this state; and

2 (2) ambulatory surgical centers in each Medicare  
3 region in this state.

4 (e) The data in the database may not:

5 (1) include:

6 (A) any data other than out-of-network billed  
7 charges of ambulatory surgical centers in this state;

8 (B) ambulatory surgical center charges that  
9 reflect payments discounted under governmental or nongovernmental  
10 health benefit plans; or

11 (C) information that is more than seven years  
12 old; or

13 (2) exclude charges accompanied by modifiers that  
14 indicate procedures with complications.

15 (f) An entity may not be certified as a database provider  
16 for the purposes of this subchapter if the entity owns or controls,  
17 or is owned or controlled by, or is an affiliate of, any entity with  
18 a pecuniary interest in the application of the database.

19 (g) The Internet website required by this section must allow  
20 an individual to determine the maximum usual and customary charge  
21 for a particular service provided by an ambulatory surgical center.

22 (h) The department shall ensure that:

23 (1) the data in the database used to compute usual and  
24 customary charges of out-of-network ambulatory surgical centers is  
25 updated regularly to accurately reflect current ambulatory  
26 surgical center retail charges; and

27 (2) charge information that is more than seven years

1 old is removed from the database.

2 (i) The department may charge a fee for certification under  
3 this section in an amount necessary to implement this section.

4 Sec. 1301.257. PROVISION OF USUAL AND CUSTOMARY CHARGE BY  
5 DATABASE PROVIDER. A database provider must compute the usual and  
6 customary charge for each service for which a billed charge is  
7 submitted to the provider by an ambulatory surgical center that  
8 subscribes to the database and provide the ambulatory surgical  
9 center with a certification of the usual and customary charge that  
10 is sufficient to enable an insurer to whom the ambulatory surgical  
11 center submits a claim for payment to comply with this subchapter.

12 Sec. 1301.258. DISCLOSURES REGARDING PAYMENT OF  
13 OUT-OF-NETWORK AMBULATORY SURGICAL CENTER. (a) An insurer that  
14 provides benefits under a preferred provider benefit plan for  
15 services provided by out-of-network ambulatory surgical centers  
16 must include in the summary plan description and on an Internet  
17 website maintained by the insurer and disclose to a prospective  
18 purchaser of the preferred provider benefit plan:

19 (1) the definition of "usual and customary charge"  
20 assigned by Section 1301.251 and a description of how payment to an  
21 out-of-network ambulatory surgical center will be based on the  
22 usual and customary charge where applicable;

23 (2) the Internet website addresses of each database  
24 provider certified under this subchapter at which a purchaser or  
25 prospective purchaser may access the database or a single website  
26 address at which an updated set of links to the website addresses of  
27 those database providers may be accessed; and

1           (3) a statement of the possibility that the payment  
2 due under the plan's out-of-network benefit provisions may be lower  
3 than an ambulatory surgical center's billed charge and that the  
4 insured may be responsible for paying the ambulatory surgical  
5 center, in addition to any other cost sharing under the plan, the  
6 difference between the billed charge and the usual and customary  
7 charge computed by a database provider or another justifiable  
8 charge the insurer is obligated to pay the ambulatory surgical  
9 center.

10           (b) Disclosures under this section must:

11           (1) be made in language easily understood by  
12 purchasers and prospective purchasers of preferred provider  
13 benefit plans;

14           (2) be made in a uniform, clearly organized manner;

15           (3) be of sufficient detail and comprehensiveness as  
16 to provide for full and fair disclosure; and

17           (4) be updated as necessary to ensure that the  
18 disclosures are accurate.

19           Sec. 1301.259. ANNUAL ACTUARIAL CERTIFICATION. (a) An  
20 insurer that offers a preferred provider benefit plan that provides  
21 coverage for services provided by out-of-network ambulatory  
22 surgical centers must annually submit to the department a written  
23 certification stating:

24           (1) the difference in value for a purchaser between:

25           (A) the coverage without the out-of-network  
26 ambulatory surgical center benefits; and

27           (B) the coverage with the out-of-network



1 ambulatory surgical center benefits; and

2 (2) that the difference between the premium a  
3 purchaser would be charged for the coverage without the  
4 out-of-network ambulatory surgical center benefits and the premium  
5 that a purchaser would be charged for the coverage with the  
6 out-of-network ambulatory surgical center benefits reflects the  
7 difference in value certified under Subdivision (1).

8 (b) The certification must be made in easily understood  
9 language, in a uniform, clearly organized manner, and be of  
10 sufficient detail and comprehensiveness as to provide for full and  
11 fair disclosure to an average consumer. The difference between the  
12 value of the coverage without the out-of-network ambulatory  
13 surgical center benefits and the coverage with the out-of-network  
14 ambulatory surgical center benefits must be expressed in terms of a  
15 percentage, although use of a percentage alone is not sufficient to  
16 satisfy the requirements of this section.

17 (c) The certification must be made by an actuary who is  
18 certified by a nationally recognized actuarial certification  
19 organization recognized by the commissioner and who is not  
20 affiliated with the insurer or any of the insurer's affiliates.

21 (d) An insurer must make the certification required by this  
22 section readily available to the public.

23 Sec. 1301.260. REMEDIES. (a) A violation of this  
24 subchapter is an unfair and deceptive act or practice under Chapter  
25 541. If the department finds or it is otherwise determined that an  
26 insurer violated this subchapter, the department shall:

27 (1) take all appropriate corrective action and use any

1 of the department's other enforcement powers to obtain the  
2 insurer's compliance; and

3 (2) if the violation results in an insured's use of an  
4 out-of-network ambulatory surgical center, order the insurer to pay  
5 the out-of-network ambulatory surgical center's billed charge as  
6 indicated on the applicable claim form.

7 (b) The remedies provided by this section are in addition to  
8 remedies available under Section 1301.254 or any other provision of  
9 this code.

10 Sec. 1301.261. ACTION BY ATTORNEY GENERAL. The attorney  
11 general may, independent of the department, bring an action to  
12 enforce this subchapter.

13 SECTION 2. Subchapter A, Chapter 243, Health and Safety  
14 Code, is amended by adding Section 243.0105 to read as follows:

15 Sec. 243.0105. FEE SCHEDULE. (a) An ambulatory surgical  
16 center must maintain a current schedule of retail fees for the  
17 services that the center typically provides.

18 (b) Before providing an elective service to an insured under  
19 a preferred provider benefit plan authorized under Chapter 1301,  
20 Insurance Code, an ambulatory surgical center that is not a  
21 preferred provider under the plan must provide the insured with:

22 (1) a copy of the center's most current fee schedule as  
23 it applies to the elective service the center expects to provide to  
24 the insured; and

25 (2) if applicable, the Internet website address for  
26 the database provider the center uses for the purposes of  
27 certification of usual and customary charges under Subchapter F,

1 Chapter 1301, Insurance Code.

2 (c) An ambulatory surgical center must disclose to any  
3 patient or prospective patient a copy of the center's 100 most  
4 commonly provided services by procedure code. The center may make  
5 the disclosure required by this subsection available by hard copy,  
6 electronically, or through an Internet website.

7 SECTION 3. Subchapter F, Chapter 1301, Insurance Code, as  
8 added by this Act, applies only to charges for services provided to  
9 an insured under an insurance policy, certificate, or contract  
10 delivered, issued for delivery, or renewed on or after January 1,  
11 2012. Charges for services provided to an insured under an  
12 insurance policy, certificate, or contract delivered, issued for  
13 delivery, or renewed before January 1, 2012, are governed by the law  
14 in effect immediately before the effective date of this Act, and  
15 that law is continued in effect for that purpose.

16 SECTION 4. This Act takes effect September 1, 2011.