

By: Smithee

H.B. No. 3087

A BILL TO BE ENTITLED

AN ACT

relating to payment for services provided by certain physicians and health care providers to individuals covered by managed care plans.

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

SECTION 1. Subchapter A, Chapter 1467, Insurance Code, is amended by adding Section 1467.0021 to read as follows:

Sec. 1467.0021. CERTAIN CLAIMS EXCLUDED. This chapter does not apply to a claim with respect to services to which Chapter 1468 applies.

SECTION 2. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1468 to read as follows:

CHAPTER 1468. PAYMENT OF CERTAIN SERVICES PROVIDED TO INDIVIDUAL COVERED BY MANAGED CARE PLAN

Sec. 1468.001. DEFINITIONS. In this chapter:

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

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

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

(2) "Managed care plan" means a plan under which a health maintenance organization, preferred provider benefit plan issuer, or other organization provides or arranges for health care

1 benefits to plan enrollees and requires or encourages plan
2 enrollees to use health care practitioners and health care
3 facilities designated by the plan.

4 Sec. 1468.002. APPLICABILITY OF CHAPTER. This chapter
5 applies to:

6 (1) emergency medical services provided by an
7 out-of-network provider; and

8 (2) medical or health care services provided:

9 (A) to an individual covered by a managed care
10 plan;

11 (B) within a hospital or similar facility; and

12 (C) by a facility-based physician or provider who
13 is an out-of-network provider.

14 Sec. 1468.003. PAYMENT FROM MANAGED CARE PLAN: USUAL AND
15 CUSTOMARY CHARGE. A physician or health care provider who provides
16 a medical or health care service described by Section 1468.002 to an
17 individual covered for the service under a managed care plan is
18 entitled to payment from the individual's managed care plan in an
19 amount equal to the usual and customary charge for the service,
20 minus any deductible, copayment, or coinsurance for which the
21 individual is responsible under the plan.

22 Sec. 1468.004. ARBITRATION OF USUAL AND CUSTOMARY CHARGE.

23 If a physician or health care provider and a managed care plan
24 issuer do not agree on the usual and customary charge for a medical
25 or health care service that is subject to this chapter, the
26 physician or health care provider or the managed care plan issuer
27 may submit the dispute to arbitration to determine the usual and

1 customary charge.

2 Sec. 1468.005. ARBITRATION PROCEDURES; ARBITRATOR
3 QUALIFICATIONS. (a) The commissioner by rule shall:

4 (1) establish procedures for conducting an
5 arbitration under this chapter; and

6 (2) prescribe qualifications for serving as an
7 arbitrator under this chapter.

8 (b) The department shall maintain a list of arbitrators
9 qualified to conduct arbitrations under this chapter.

10 Sec. 1468.006. APPEAL OF ARBITRATOR DETERMINATION. (a) On
11 or before the 60th day after the date an arbitrator determines a
12 usual and customary charge under this chapter, either party to the
13 arbitration may file a petition for judicial review of the
14 determination in a district court.

15 (b) The standard of review for judicial review under this
16 section is de novo.

17 (c) In an action under this section, the amount determined
18 by the arbitrator to be the usual and customary charge shall be
19 admitted into evidence. There is a rebuttable presumption that the
20 amount determined by the arbitrator is the usual and customary
21 charge.

22 (d) The party that prevails in an action under this section
23 is entitled to an award of the party's reasonable attorney's fees
24 incurred in connection with the action.

25 (e) The managed care plan shall promptly pay the physician
26 or provider the amount of the usual and customary charge determined
27 by the court under this section.

1 Sec. 1468.007. APPLICABILITY OF CERTAIN OTHER LAW. Except
2 to the extent of any conflict with this section, Chapter 171, Civil
3 Practice and Remedies Code, applies to an arbitration conducted
4 under this chapter.

5 Sec. 1468.008. PAYMENT FROM COVERED INDIVIDUAL. (a) Unless
6 an individual who receives a medical or health care service to which
7 this chapter applies agrees before the service is provided to a
8 total charge for the service that exceeds the usual and customary
9 charge, the physician or provider is not entitled to payment from
10 the individual in excess of any required deductible, copayment, or
11 coinsurance.

12 (b) If the physician or provider seeks to recover from the
13 individual an amount that exceeds the amount allowed under this
14 section, the physician or provider must:

15 (1) notify the individual of the usual and customary
16 rate established in accordance with this chapter; and

17 (2) notify the individual that the individual is not
18 required by law to pay the portion of the fee that exceeds the usual
19 and customary rate unless the individual agreed to a higher rate
20 before the service was provided.

21 (c) If a physician or provider bills an individual in
22 violation of this section and the individual pays an amount that is
23 higher than the individual would be required to pay under this
24 section, the individual may file an action against the physician or
25 provider to recover the amount of the overpayment and the
26 individual's reasonable attorney's fees incurred in connection with
27 recovering the overpayment.

1 (d) If a physician or health care provider files an action
2 against an individual to recover payment for services that are
3 subject to this chapter and is found to be seeking payment that
4 exceeds the amount for which the individual is liable under this
5 section, the individual is entitled to recover the individual's
6 reasonable attorney's fees incurred in connection with the action.

7 SECTION 3. The change in law made by this Act applies only
8 to medical or health care services provided on or after the
9 effective date of this Act to an individual covered under a managed
10 care plan delivered, issued for delivery, or renewed on or after the
11 effective date of this Act and payment for those services.

12 SECTION 4. This Act takes effect January 1, 2012.