BILL ANALYSIS

C.S.H.B. 2360
By: Bonnen, Greg
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that, while most industries in Texas disclose the price of goods and services to potential customers, health care providers by and large refrain from advertising those prices before the services are delivered and instead wait to disclose those prices on the patient's post-procedure bill. C.S.H.B. 2360 seeks to implement price disclosure requirements for health care services similar to those required of other industries.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2360 amends the Insurance Code to require each health care contract to include a disclosure form that states payment and compensation terms in plain language. The bill requires such a form to include information sufficient for a health care provider or physician to determine the compensation or payment for the provider's or physician's services and to include the following: the manner of payment; the methodology used to compute any fee schedule; the fee schedule for procedure codes reasonably expected to be billed by the health care provider or physician for services provided under the contract, and, on request, the fee schedule for other procedure codes used by, or that may be used by, the health care provider or physician; and the effect of edits, if any, on payment or compensation. The bill sets out the information that must be included on both the methodology disclosure and the fee schedule and authorizes the fee schedule to be provided electronically. The bill requires a health care contractor to provide the fee schedule to an affected health care provider or physician when a material change to a contract occurs that affects the health care provider's or physician's payment or compensation, authorizes a health care provider or physician to request that a written fee schedule be provided up to twice annually, and requires the health care contractor to provide the written fee schedule promptly. The bill authorizes a health care contractor to satisfy the requirement for inclusion of the effect of edits in the disclosure form by providing a clearly understandable, readily available mechanism that allows a health care provider or physician to determine the effect of an edit on the payment or compensation before a service is provided or a claim is submitted. The bill prohibits a health care contract from precluding the use of the contract or disclosure of the contract to a third party to enforce the bill's provisions regarding disclosure of payment and compensation methodology or other state or federal law and establishes that the third party is bound by any applicable confidentiality requirements, including those stated in the contract.

C.S.H.B. 2360 authorizes the commissioner of insurance to adopt reasonable rules as necessary to implement the purposes and provisions of the bill relating to disclosure of payment and compensation methodology and requires the commissioner to adopt rules as necessary to enforce such provisions. The bill makes a violation of its provisions regarding the required disclosure of payment and compensation terms a deceptive act or practice in insurance under applicable statutory provisions.

C.S.H.B. 2360 defines, among other terms, "health care contract" to mean a contract entered into or renewed between a health care contractor and a physician or health care provider for the delivery of health care services to others and includes within the definition of "health care contractor" certain specified health benefit plan issuers, certain third-party administrators, and a pharmacy benefit manager that administers or manages prescription drug benefits. The bill specifies that the definition of "health care provider" does not include a physician, a hospital, or other health care facility. The bill exempts an employment contract or arrangement between health care providers or physicians from its provisions regarding the required disclosure of payment and compensation methodology but expressly includes contracts for health care services between a medical group and other medical groups within the applicability of those provisions. The bill makes its provisions applicable only to contracts between a health care contractor and a physician or between a health care contractor and a health care provider who has filed a form with the commissioner evidencing that the provider elects to comply with provisions relating to the disclosure of health care prices, unless such applicability precludes the application of the bill's provisions between a medical group and other medical groups.

C.S.H.B. 2360 applies its provisions regarding the required disclosure of payment and compensation methodology only to a health care contract that is entered into or renewed on or after January 1, 2014.

C.S.H.B. 2360 amends the Occupations Code to require a health care provider who elects to comply with the bill's provisions relating to disclosure of health care prices and a physician to disclose to a consumer the price of a health care service or good before the start of that service or the transfer of that good. The bill authorizes the disclosure to be made through the health care provider's or physician's Internet website or in writing given to the consumer before the start of the health care service or the transfer of the health care good. The bill requires a provider or physician that gives the disclosure through the Internet website to inform the consumer in writing, before the start of the service or transfer of the good, that health care costs are disclosed on the provider's or physician's website.

C.S.H.B. 2360 establishes that a provider or physician who fails to disclose the information as required cannot recover a fee, a deductible, a copayment, or any other payment or obligation from the consumer related to a health care service or good for which the provider or physician did not disclose the price. The bill authorizes a health care provider or physician to recover the amount of a payment or other obligation owed to the provider or physician from a consumer if the cause of the failure to disclose was a health care contractor's failure to disclose required information under the bill's provisions relating to disclosure to a third party. The bill makes its provisions relating to disclosure of health care prices to a consumer applicable only to a physician and to a health care provider who elects to comply with those provisions and who files a form evidencing that election with the commissioner of insurance and requires the commissioner to adopt a form for evidencing such an election.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2360 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1470 to read as follows:

CHAPTER 1470. DISCLOSURE OF PAYMENT AND COMPENSATION METHODOLOGY

Sec. 1470.001. 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.

(2) "Health benefit plan issuer" means:

(A) an insurance company, association, organization, group hospital service corporation, health maintenance organization, or pharmacy benefit manager that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides health insurance or health care benefits and includes:

(i) a life, health, or accident insurance company operating under Chapter 841 or 982;

(ii) a general casualty insurance company operating under Chapter 861;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a mutual life insurance company operating under Chapter 882;

(v) a local mutual aid association operating under Chapter 886;

(vi) a statewide mutual assessment company operating under Chapter 881;

(vii) a mutual assessment company or mutual assessment life, health, and accident association operating under Chapter 887;

(viii) a mutual insurance company

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(iii) a fraternal benefit society operating under Chapter 885;

(iv) a mutual life insurance company operating under Chapter 882;

(v) a local mutual aid association operating under Chapter 886;

(vi) a statewide mutual assessment company operating under Chapter 881;

(vii) a mutual assessment company or mutual assessment life, health, and accident association operating under Chapter 887;

(viii) a mutual insurance company

operating under Chapter 883 that writes coverage other than life insurance;
(ix) a Lloyd's plan operating under Chapter 941;
(x) a reciprocal exchange operating under Chapter 942;
(xi) a stipulated premium insurance company operating under Chapter 884;
(xii) an exchange operating under Chapter 942;
(xiii) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss(g)(1);
(xiv) a Medicaid managed care program operated under Chapter 533, Government Code;
(xv) a health maintenance organization operating under Chapter 843;
(xvi) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; and
(xvii) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;
(B) the state Medicaid program operated under Chapter 32, Human Resources Code, or the state child health plan or health benefits plan for children under Chapter 62 or 63, Health and Safety Code;
(C) the Employees Retirement System of Texas or another entity issuing or administering a basic coverage plan under Chapter 1551;
(D) the Teacher Retirement System of Texas or another entity issuing or administering a basic plan under Chapter 1575 or a primary care coverage plan under Chapter 1579;
(E) The Texas A&M University System or The University of Texas System or another entity issuing or administering basic coverage under Chapter 1601; and
(F) an entity issuing or administering medical benefits provided under a workers' compensation insurance policy or otherwise under Title 5, Labor Code.
(3) "Health care contract" means a contract entered into or renewed between a health care contractor and a physician or health care provider for the delivery of health care services to others.
(4) "Health care contractor" means an individual or entity that has as a business purpose contracting with physicians or

operating under Chapter 883 that writes coverage other than life insurance;
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(D) the Teacher Retirement System of Texas or another entity issuing or administering a basic plan under Chapter 1575 or a primary care coverage plan under Chapter 1579;
(E) The Texas A&M University System or The University of Texas System or another entity issuing or administering basic coverage under Chapter 1601; and
(F) an entity issuing or administering medical benefits provided under a workers' compensation insurance policy or otherwise under Title 5, Labor Code.
(3) "Health care contract" means a contract entered into or renewed between a health care contractor and a physician or health care provider for the delivery of health care services to others.
(4) "Health care contractor" means an individual or entity that has as a business purpose contracting with physicians or

health care providers for the delivery of health care services. The term includes a health benefit plan issuer, an administrator regulated under Chapter 4151, and a pharmacy benefit manager that administers or manages prescription drug benefits.

(5) "Health care provider" means an individual or entity that furnishes goods or services under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term includes a physician or a hospital or other health care facility.

(6) "Physician" means:

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

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

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

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

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

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

Sec. 1470.002. DEFINITION OF MATERIAL CHANGE. For purposes of this chapter, "material change" means a change to a contract that decreases the health care provider's payment or compensation.

Sec. 1470.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to an employment contract or arrangement between health care providers.

(b) Notwithstanding Subsection (a), this chapter applies to contracts for health care services between a medical group and other medical groups.

health care providers for the delivery of health care services. The term includes a health benefit plan issuer, an administrator regulated under Chapter 4151, and a pharmacy benefit manager that administers or manages prescription drug benefits.

(5) "Health care provider" means an individual or entity that furnishes goods or services under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term does not include a physician, hospital, or other health care facility.

(6) "Physician" means:

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

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

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

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

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Sec. 1470.002. DEFINITION OF MATERIAL CHANGE. For purposes of this chapter, "material change" means a change to a contract that decreases the health care provider's or physician's payment or compensation.

Sec. 1470.003. APPLICABILITY OF CHAPTER. (b) This chapter does not apply to an employment contract or arrangement between health care providers or physicians.

(c) Notwithstanding Subsection (a), this chapter applies to contracts for health care services between a medical group and other medical groups.

(a) Except as otherwise provided by Subsection (c), this chapter applies only to contracts between a health care contractor and:

(1) a physician; or

(2) a health care provider who has filed a

	form described by Section 118.002, Occupations Code, with the commissioner.
Sec. 1470.004. RULEMAKING AUTHORITY.	Sec. 1470.004. RULEMAKING AUTHORITY.
Sec. 1470.005. DISCLOSURE TO THIRD PARTY.	Sec. 1470.005. DISCLOSURE TO THIRD PARTY.
Sec. 1470.006. REQUIRED DISCLOSURE OF PAYMENT AND COMPENSATION TERMS. (a) Each health care contract must include a disclosure form that states, in plain language, payment and compensation terms. The form must include information sufficient for a health care provider to determine the compensation or payment for the provider's services.	Sec. 1470.006. REQUIRED DISCLOSURE OF PAYMENT AND COMPENSATION TERMS. (a) Each health care contract must include a disclosure form that states, in plain language, payment and compensation terms. The form must include information sufficient for a health care provider or physician to determine the compensation or payment for the provider's or physician's services.
(b) The disclosure form under Subsection (a) must include: (1) the manner of payment, such as fee-for-service, capitation, or risk sharing; (2) the methodology used to compute any fee schedule, such as the use of a relative value unit system and conversion factor, percentage of Medicare payment system, or percentage of billed charges; (3) the fee schedule for procedure codes reasonably expected to be billed by the health care provider for services provided under the contract and, on request, the fee schedule for other procedure codes used by, or that may be used by, the health care provider; and (4) the effect of edits, if any, on payment or compensation.	(b) The disclosure form under Subsection (a) must include: (1) the manner of payment, such as fee-for-service, capitation, or risk sharing; (2) the methodology used to compute any fee schedule, such as the use of a relative value unit system and conversion factor, percentage of Medicare payment system, or percentage of billed charges; (3) the fee schedule for procedure codes reasonably expected to be billed by the health care provider or physician for services provided under the contract and, on request, the fee schedule for other procedure codes used by, or that may be used by, the health care provider or physician; and (4) the effect of edits, if any, on payment or compensation.
(c) As applicable, the methodology disclosure under Subsection (b)(2) must include: (1) the name of any relative value system used; (2) the version, edition, or publication date of that system; (3) any applicable conversion or geographic factors; and (4) the date by which compensation or fee schedules may be changed by the methodology, if allowed under the contract.	(c) As applicable, the methodology disclosure under Subsection (b)(2) must include: (1) the name of any relative value system used; (2) the version, edition, or publication date of that system; (3) any applicable conversion or geographic factors; and (4) the date by which compensation or fee schedules may be changed by the methodology, if allowed under the contract.
(d) The fee schedule described by Subsection (b)(3) must include, as applicable, service or procedure codes and the associated payment or compensation for each code. The fee schedule may be	(d) The fee schedule described by Subsection (b)(3) must include, as applicable, service or procedure codes and the associated payment or compensation for each code. The fee schedule may be

provided electronically.

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

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

Sec. 1470.007. ENFORCEMENT.

SECTION 2. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 118 to read as follows:

CHAPTER 118. REQUIRED DISCLOSURE OF HEALTH CARE COSTS

Sec. 118.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires health care goods, including drugs or devices, or services from a health care provider.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Health care contractor" has the meaning assigned by Section 1470.001, Insurance Code.

(4) "Health care provider" means a person who furnishes goods or services under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term includes a physician or a hospital or other health care facility.

Sec. 118.002. RULEMAKING

provided electronically.

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

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

Sec. 1470.007. ENFORCEMENT.

SECTION 2. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 118 to read as follows:

CHAPTER 118. DISCLOSURE OF HEALTH CARE PRICES

Sec. 118.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires health care goods, including drugs or devices, or services from a health care provider or physician.

(2) "Health care contractor" has the meaning assigned by Section 1470.001, Insurance Code.

(3) "Health care good" or "health care service" means a good or service, as applicable, to diagnose, prevent, alleviate, cure, or heal a health condition, sickness, or injury that is provided to a consumer by a physician or health care provider.

(4) "Health care provider" means a person who furnishes goods or services under a license, certificate, registration, or other authority issued by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term does not include a physician, hospital, or other health care facility.

AUTHORITY. The department may adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Sec. 118.002. APPLICABILITY. (a) This chapter applies only to:
(1) a physician; and
(2) a health care provider who elects to comply with this chapter and files a form evidencing that election with the commissioner of insurance.
(b) The commissioner of insurance shall adopt a form to be used to comply with Subsection (a).

Sec. 118.003. DISCLOSURE OF HEALTH CARE COSTS. (a) A health care provider must disclose to a consumer before the commencement of a health care service or the transfer of a health care good, including a drug or device, the itemized cost of the service or good.

Sec. 118.003. DISCLOSURE OF HEALTH CARE PRICES. (a) A health care provider who elects to comply with this chapter and a physician must disclose to a consumer before the commencement of a health care service or the transfer of a health care good, including a drug or device, the price of the service or good.

(b) The itemized cost of the service or good must separately state all significant components of the cost, including, if applicable:
(1) the contracted rates of the health care provider;
(2) the fee schedule of the consumer's health plan issuer;
(3) the cost of the consumer's specific medical or health care procedure;
(4) the cost of other health care providers involved in the service or good;
(5) the cost of stay at a hospital or other health care facility; and
(6) the price the manufacturer or wholesaler of the health care good charged for the good sold to the health care provider.

(c) The disclosure may be made through the health care provider's Internet website or in writing given to the consumer before the commencement of the health care service or the transfer of the health care good. If the disclosure was given through the provider's Internet website, the provider shall inform the consumer in writing, before the commencement of the service or transfer of the good, that health care costs are disclosed on the provider's website.

(b) The disclosure may be made through the health care provider's or physician's Internet website or in writing given to the consumer before the commencement of the health care service or the transfer of the health care good. If the disclosure was given through the provider's or physician's Internet website, the provider or physician shall inform the consumer in writing, before the commencement of the service or transfer of the good, that health care prices are disclosed on the website.

Sec. 118.004. FAILURE TO DISCLOSE.

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(a) A provider that fails to disclose the information as described by this section cannot recover a fee, a deductible, a copayment, or any other payment or obligation from the consumer related to a health care service or good for which the provider did not disclose the itemized costs.	(a) A health care provider or physician who fails to disclose the information as described by this section cannot recover a fee, a deductible, a copayment, or any other payment or obligation from the consumer related to a health care service or good for which the provider or physician did not disclose the price.
(b) Notwithstanding Subsection (a), a health care provider may recover the amount of a payment or other obligation owed to the provider from a consumer if the cause of the failure to disclose was a health care contractor's failure to disclose information under Section 1470.005, Insurance Code.	(b) Notwithstanding Subsection (a), a health care provider or physician may recover the amount of a payment or other obligation owed to the provider or physician from a consumer if the cause of the failure to disclose was a health care contractor's failure to disclose information under Section 1470.005, Insurance Code.
SECTION 3. (a) Chapter 1470, Insurance Code, as added by this Act, applies only to a health care contract that is entered into or renewed on or after January 1, 2014. A health care contract entered into before January 1, 2014, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose. (b) Chapter 118, Occupations Code, as added by this Act, applies only to a health care service that is commenced or a health care good that is transferred on or after the effective date of this Act. A health care service that is commenced or a health care good that is transferred before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.	SECTION 3. Same as introduced version.
SECTION 4. This Act takes effect September 1, 2013.	SECTION 4. Same as introduced version.