

By: Campbell

S.B. No. 1097

A BILL TO BE ENTITLED

AN ACT

1
2 relating to payment of and disclosures related to certain
3 out-of-network provider charges; authorizing a fee; providing a
4 penalty.

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

6 SECTION 1. Chapter 1301, Insurance Code, is amended by
7 adding Subchapter C-2 to read as follows:

8 SUBCHAPTER C-2. PAYMENT OF OUT-OF-NETWORK PROVIDER CHARGES

9 Sec. 1301.141. DEFINITIONS. In this subchapter:

10 (1) "Clean claim" has the meaning assigned by Section
11 1301.101.

12 (2) "Database provider" means a database provider
13 certified by the department under Section 1301.1424.

14 (3) "Designated reimbursement information
15 organization" means an organization designated by the commissioner
16 under Section 1301.1426.

17 (4) "Geozip area" means an area that includes all zip
18 codes with the identical first three digits. For purposes of this
19 term, the geozip area is the closest geozip area to the location in
20 which the health care service was performed if the location does not
21 have a zip code.

22 (5) "Out-of-network provider," with respect to a
23 preferred provider benefit plan, means a physician or health care
24 provider that is not a preferred provider of the plan.

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

6 (7) "Usual and customary charge" means a charge for a
7 service, classified by geozip area and Current Procedural
8 Terminology code, that is in the 90th percentile of the charges for
9 that service reported to a database provider.

10 Sec. 1301.1414. APPLICABILITY OF SUBCHAPTER. This
11 subchapter applies only to an insurer providing a preferred
12 provider benefit plan that provides benefits for services provided
13 by out-of-network providers.

14 Sec. 1301.1415. PAYMENT OF CERTAIN OUT-OF-NETWORK
15 PROVIDERS. (a) An insurer must use a charge-based methodology that
16 complies with this subchapter for computing a payment for a service
17 provided by an out-of-network provider if the provider submits a
18 clean claim for payment that includes:

19 (1) a certification of the usual and customary charge
20 for the service determined by a database provider selected by the
21 out-of-network provider; or

22 (2) a certification by a database provider selected by
23 the out-of-network provider that there are not sufficient reported
24 charges in the database provider's database to establish the usual
25 and customary charge for the service.

26 (b) If an out-of-network provider submits a clean claim for
27 payment of a charge that includes a certification from a database

1 provider selected by the out-of-network provider indicating that
2 the billed charge is not higher than the usual and customary charge,
3 the insurer shall pay the lesser of the billed charge or the usual
4 and customary charge minus any portion of the charge that is the
5 insured's responsibility under the preferred provider benefit
6 plan.

7 (c) If an out-of-network provider submits a clean claim for
8 payment of a charge that includes a certification from a database
9 provider selected by the out-of-network provider indicating that
10 the billed charge is higher than the usual and customary charge, the
11 insurer shall pay the billed charge minus any portion of the charge
12 that is the insured's responsibility under the preferred provider
13 benefit plan if the billed charge is justifiable considering
14 special circumstances under which the services are provided. If
15 the charge is not justifiable considering special circumstances
16 under which the services are provided, the insurer shall pay the
17 usual and customary charge minus any portion of the charge that is
18 the insured's responsibility under the preferred provider benefit
19 plan.

20 (d) If an out-of-network provider submits a clean claim for
21 payment of a charge that includes a certification described by
22 Subsection (a)(2) with respect to a billed charge, the insurer
23 shall pay 80 percent of the billed charge or an amount equal to the
24 90th percentile of the charges for the service reported by the
25 designated reimbursement information organization for physicians
26 or health care providers in the same geozip area, whichever is less,
27 minus any portion of the charge that is the insured's

1 responsibility under the preferred provider benefit plan.

2 (e) An insurer may not pay less than an applicable amount
3 required under this section because the insurer has not received a
4 portion of the charge that is the insured's responsibility.

5 Sec. 1301.1416. PROMPT PAYMENT OF CERTAIN CHARGES. If an
6 out-of-network provider submits to an insurer a clean claim for
7 payment of a charge that includes a statement from the provider
8 indicating that the provider is willing to accept a payment for the
9 service, classified by geozip area and Current Procedural
10 Terminology code, that is in the 85th percentile of the charges for
11 that service reported to a database provider selected by the
12 out-of-network provider and the claim for payment is otherwise made
13 in accordance with Subchapter C, the claim must be paid in
14 accordance with Subchapter C as if the physician or health care
15 provider was a preferred provider.

16 Sec. 1301.142. REQUIRED CONTRACT TERMS. The language used
17 in the health insurance policy to describe the benefit provided
18 under the preferred provider benefit plan for services provided by
19 an out-of-network provider:

20 (1) must:

21 (A) provide that, if a certification described by
22 Section 1301.1415(a)(2) with respect to the charge is submitted
23 with the claim, payment to an out-of-network provider will be
24 computed based on 80 percent of the billed charge or an amount equal
25 to the 90th percentile of the charges for the service reported by
26 the designated reimbursement information organization for
27 physicians or health care providers in the same geozip area,

1 whichever is less;

2 (B) define "usual and customary charge" as that
3 term is defined by Section 1301.141; and

4 (C) incorporate into the definition of "usual and
5 customary charge" the definition of "database provider" assigned by
6 Section 1301.141; and

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

9 Sec. 1301.1424. CERTIFICATION AND QUALIFICATIONS OF
10 DATABASE PROVIDER AND DATABASE. (a) A database provider that is
11 used to determine usual and customary charges for the purposes of
12 this subchapter must be certified by the department. The
13 department may certify a database provider under this subchapter
14 only if the department determines that the database provider and
15 the database used by the provider for the purposes of this
16 subchapter comply with this section.

17 (b) A database provider must be a nonprofit organization
18 that:

19 (1) maintains a database with content that complies
20 with this section;

21 (2) maintains an active Internet website accessible to
22 all physicians or health care providers subscribing to the database
23 and to the public; and

24 (3) demonstrates an ability to:

25 (A) maintain a compilation of charge data that is
26 absent any data required to be excluded under Subsection (e)(1);

27 and

1 (B) distinguish charges that are not related to
2 one another and eliminate irrelevant or erroneous charges from
3 reported charge information.

4 (c) A database provider must compute usual and customary
5 charges for services provided by physicians or health care
6 providers in accordance with this subchapter.

7 (d) The data in the database must contain out-of-network
8 charges, classified by Current Procedural Terminology code, for
9 physician and health care providers in each geozip area in this
10 state.

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

12 (1) include:

13 (A) any data other than out-of-network billed
14 charges from physicians and health care providers in this state;

15 (B) physician and health care provider charges
16 that reflect payments discounted under governmental or
17 nongovernmental health benefit plans; or

18 (C) information that is more than seven years
19 old; or

20 (2) exclude charges accompanied by modifiers that
21 indicate procedures with complications.

22 (f) An entity may not be certified as a database provider
23 for the purposes of this subchapter if the entity owns or controls,
24 or is owned or controlled by, or is an affiliate of, any entity with
25 a pecuniary interest in the application of the database, including
26 an insurer, a holding company of an insurer, or a trade association
27 in the field of insurance or health benefits.

1 (g) The Internet website required by this section must allow
2 an individual to determine the usual and customary charge for a
3 particular service provided by a physician or health care provider.

4 (h) The department shall ensure that:

5 (1) the data in the database used to compute usual and
6 customary charges of out-of-network providers is updated regularly
7 to accurately reflect current physician and health care provider
8 retail charges;

9 (2) charge information that is more than seven years
10 old is removed from the database; and

11 (3) at least one entity is certified as a database
12 provider.

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

15 Sec. 1301.1425. PROVISION OF USUAL AND CUSTOMARY CHARGE BY
16 DATABASE PROVIDER. A database provider must compute the usual and
17 customary charge for each service for which a billed charge is
18 submitted to the insurer by a physician or health care provider that
19 subscribes to the database and provide the physician or health care
20 provider with a certification of the usual and customary charge or a
21 certification described by Section 1301.1415(a)(2), as applicable,
22 that is sufficient to enable an insurer to whom the physician or
23 health care provider submits a claim for payment to comply with this
24 subchapter.

25 Sec. 1301.1426. DESIGNATED REIMBURSEMENT INFORMATION
26 ORGANIZATION. (a) The commissioner by rule shall designate an
27 organization described by this section to report charges for

1 services provided by physicians and health care providers under
2 this subchapter.

3 (b) The organization designated under this section must be
4 an independent, not-for-profit organization created to:

5 (1) establish and maintain a database to help insurers
6 determine reimbursement rates for out-of-network charges; and

7 (2) provide insureds with a clear, unbiased
8 explanation of the reimbursement process.

9 Sec. 1301.143. DISCLOSURES REGARDING PAYMENT OF
10 OUT-OF-NETWORK PROVIDER. (a) An insurer that provides benefits
11 under a preferred provider benefit plan for services provided by
12 out-of-network providers must disclose in the summary plan
13 description, on an Internet website maintained by the insurer, and
14 to a prospective purchaser of the plan:

15 (1) the definition of "usual and customary charge"
16 assigned by Section 1301.141 and a description of how payment to an
17 out-of-network provider will, if applicable, be based on the lesser
18 of:

19 (A) the usual and customary charge for the
20 specific procedure that a physician or health care provider bills
21 the insurer; or

22 (B) 80 percent of the billed charge or an amount
23 equal to the 90th percentile of the charges for the service reported
24 by the designated reimbursement information organization for
25 physicians and health care providers in the same geozip area;

26 (2) examples of the anticipated portion of the charge
27 that will be the insured's responsibility for frequently billed

1 health care services by out-of-network providers;

2 (3) a methodology for determining the anticipated
3 portion of the charge that will be the insured's responsibility for
4 a specific health care service that is based on the amount, not an
5 approximation, that the insurer pays;

6 (4) the Internet website addresses of each database
7 provider certified under this subchapter at which a purchaser or
8 prospective purchaser may access the database or a single website
9 address at which an updated set of links to the website addresses of
10 those database providers may be accessed; and

11 (5) a statement that if the insurer's payment due under
12 the plan's out-of-network benefit provisions is not sufficient to
13 cover the total billed charge, the physician or health care
14 provider agrees to accept as payment in full the amount paid by the
15 plan in accordance with those provisions plus any portion of the
16 charge that is the insured's responsibility under the plan.

17 (b) Disclosures under this section must:

18 (1) be made in language easily understood by
19 purchasers and prospective purchasers of preferred provider
20 benefit plans;

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

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

24 (4) be updated as necessary to ensure that the
25 disclosures are accurate.

26 Sec. 1301.1434. ANNUAL ACTUARIAL CERTIFICATION. (a) An
27 insurer that offers a preferred provider benefit plan that provides

1 coverage for services provided by out-of-network providers must
2 annually submit to the department a written certification stating:

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

4 (A) the coverage without the out-of-network
5 provider benefits; and

6 (B) the coverage with the out-of-network
7 provider benefits; and

8 (2) that the difference between the amount a purchaser
9 would be charged for the coverage without the out-of-network
10 provider benefits and the amount that a purchaser would be charged
11 for the coverage with the out-of-network provider benefits reflects
12 the difference in value certified under Subdivision (1).

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

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

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

1 Sec. 1301.1435. PAYMENT IN FULL. If the insurer's payment
2 due under a preferred provider benefit plan's out-of-network
3 benefit provisions is not sufficient to cover the total billed
4 charge, a physician or health care provider agrees to accept as
5 payment in full the amount paid by the plan in accordance with those
6 provisions plus any portion of the charge that is the insured's
7 responsibility under the plan.

8 Sec. 1301.1436. REMEDIES. (a) An insurer that violates
9 Section 1301.1416 is subject to the penalties imposed under Section
10 1301.137 as if the out-of-network provider was a preferred
11 provider.

12 (b) The remedies provided by this section are in addition to
13 remedies available under any other provision of this code.

14 SECTION 2. Subchapter C-2, Chapter 1301, Insurance Code, as
15 added by this Act, applies only to charges for services provided to
16 an insured under a health insurance policy delivered, issued for
17 delivery, or renewed on or after January 1, 2016. Charges for
18 services provided to an insured under a policy delivered, issued
19 for delivery, or renewed before January 1, 2016, are governed by the
20 law in effect immediately before the effective date of this Act, and
21 that law is continued in effect for that purpose.

22 SECTION 3. This Act takes effect September 1, 2015.