

By: Hancock, et al.  
(Fruzzo, Collier)

S.B. No. 507

Substitute the following for S.B. No. 507:

By: Phillips

C.S.S.B. No. 507

A BILL TO BE ENTITLED

AN ACT

relating to mediation of the settlement of certain out-of-network health benefit claims involving balance billing.

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

SECTION 1. Section 1467.001, Insurance Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (2-a), (2-b), (3-a), and (4-a) to read as follows:

(1) "Administrator" means:

(A) an administering firm for a health benefit plan providing coverage under Chapter 1551, 1575, or 1579; and

(B) if applicable, the claims administrator for the health benefit plan.

(2-a) "Emergency care" has the meaning assigned by Section 1301.155.

(2-b) "Emergency care provider" means a physician, health care practitioner, facility, or other health care provider who provides and bills an enrollee, administrator, or health benefit plan for emergency care.

(3) "Enrollee" means an individual who is eligible to receive benefits through a preferred provider benefit plan or a health benefit plan under Chapter 1551, 1575, or 1579.

(3-a) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(4) "Facility-based provider [~~physician~~]" means a

1 physician, health care practitioner, or other health care provider  
2 ~~[radiologist, an anesthesiologist, a pathologist, an emergency~~  
3 ~~department physician, a neonatologist, or an assistant surgeon.~~

4 ~~[(A) to whom the facility has granted clinical~~  
5 ~~privileges; and~~

6 ~~[(B)]~~ who provides health care or medical  
7 services to patients of a [the] facility ~~[under those clinical~~  
8 ~~privileges]~~.

9 (4-a) "Health care practitioner" means an individual  
10 who is licensed to provide health care services.

11 (5) "Mediation" means a process in which an impartial  
12 mediator facilitates and promotes agreement between the insurer  
13 offering a preferred provider benefit plan or the administrator and  
14 a facility-based provider or emergency care provider ~~[physician]~~ or  
15 the provider's ~~[physician's]~~ representative to settle a health  
16 benefit claim of an enrollee.

17 (7) "Party" means an insurer offering a preferred  
18 provider benefit plan, an administrator, or a facility-based  
19 provider or emergency care provider ~~[physician]~~ or the provider's  
20 ~~[physician's]~~ representative who participates in a mediation  
21 conducted under this chapter. The enrollee is also considered a  
22 party to the mediation.

23 SECTION 2. Section [1467.002](#), Insurance Code, is amended to  
24 read as follows:

25 Sec. 1467.002. APPLICABILITY OF CHAPTER. This chapter  
26 applies to:

27 (1) a preferred provider benefit plan offered by an

1 insurer under Chapter 1301; and

2 (2) an administrator of a health benefit plan, other  
3 than a health maintenance organization plan, under Chapter 1551,  
4 1575, or 1579.

5 SECTION 3. Section 1467.003, Insurance Code, is amended to  
6 read as follows:

7 Sec. 1467.003. RULES. The commissioner, the Texas Medical  
8 Board, any other appropriate regulatory agency, and the chief  
9 administrative law judge shall adopt rules as necessary to  
10 implement their respective powers and duties under this chapter.

11 SECTION 4. Section 1467.005, Insurance Code, is amended to  
12 read as follows:

13 Sec. 1467.005. REFORM. This chapter may not be construed to  
14 prohibit:

15 (1) an insurer offering a preferred provider benefit  
16 plan or administrator from, at any time, offering a reformed claim  
17 settlement; or

18 (2) a facility-based provider or emergency care  
19 provider [~~physician~~] from, at any time, offering a reformed charge  
20 for health care or medical services or supplies.

21 SECTION 5. Section 1467.051, Insurance Code, is amended to  
22 read as follows:

23 Sec. 1467.051. AVAILABILITY OF MANDATORY MEDIATION;  
24 EXCEPTION. (a) An enrollee may request mediation of a settlement  
25 of an out-of-network health benefit claim if:

26 (1) the amount for which the enrollee is responsible  
27 to a facility-based provider or emergency care provider

1 ~~[physician]~~, after copayments, deductibles, and coinsurance,  
2 including the amount unpaid by the administrator or insurer, is  
3 greater than \$500; and

4 (2) the health benefit claim is for:

5 (A) emergency care; or

6 (B) a health care or medical service or supply  
7 provided by a facility-based provider ~~[physician]~~ in a facility  
8 ~~[hospital]~~ that is a preferred provider or that has a contract with  
9 the administrator.

10 (b) Except as provided by Subsections (c) and (d), if an  
11 enrollee requests mediation under this subchapter, the  
12 facility-based provider or emergency care provider, ~~[physician]~~ or  
13 the provider's ~~[physician's]~~ representative, and the insurer or the  
14 administrator, as appropriate, shall participate in the mediation.

15 (c) Except in the case of an emergency and if requested by  
16 the enrollee, a facility-based provider ~~[physician]~~ shall, before  
17 providing a health care or medical service or supply, provide a  
18 complete disclosure to an enrollee that:

19 (1) explains that the facility-based provider  
20 ~~[physician]~~ does not have a contract with the enrollee's health  
21 benefit plan;

22 (2) discloses projected amounts for which the enrollee  
23 may be responsible; and

24 (3) discloses the circumstances under which the  
25 enrollee would be responsible for those amounts.

26 (d) A facility-based provider ~~[physician]~~ who makes a  
27 disclosure under Subsection (c) and obtains the enrollee's written

1 acknowledgment of that disclosure may not be required to mediate a  
2 billed charge under this subchapter if the amount billed is less  
3 than or equal to the maximum amount projected in the disclosure.

4 SECTION 6. Subchapter B, Chapter 1467, Insurance Code, is  
5 amended by adding Section 1467.0511 to read as follows:

6 Sec. 1467.0511. NOTICE AND INFORMATION PROVIDED TO  
7 ENROLLEE. (a) A bill sent to an enrollee by a facility-based  
8 provider or emergency care provider or an explanation of benefits  
9 sent to an enrollee by an insurer or administrator for an  
10 out-of-network health benefit claim eligible for mediation under  
11 this chapter must contain, in not less than 10-point boldface type,  
12 a conspicuous, plain-language explanation of the mediation process  
13 available under this chapter, including information on how to  
14 request mediation and a statement that is substantially similar to  
15 the following:

16 "You may be able to reduce some of your out-of-pocket costs  
17 for an out-of-network medical or health care claim that is eligible  
18 for mediation by contacting the Texas Department of Insurance at  
19 (website) and (phone number)."

20 (b) If an enrollee contacts an insurer, administrator,  
21 facility-based provider, or emergency care provider about a bill  
22 that may be eligible for mediation under this chapter, the insurer,  
23 administrator, facility-based provider, or emergency care provider  
24 is encouraged to:

25 (1) inform the enrollee about mediation under this  
26 chapter; and

27 (2) provide the enrollee with the department's

1 toll-free telephone number and Internet website address.

2 SECTION 7. Section 1467.052(c), Insurance Code, is amended  
3 to read as follows:

4 (c) A person may not act as mediator for a claim settlement  
5 dispute if the person has been employed by, consulted for, or  
6 otherwise had a business relationship with an insurer offering the  
7 preferred provider benefit plan or a physician, health care  
8 practitioner, or other health care provider during the three years  
9 immediately preceding the request for mediation.

10 SECTION 8. Section 1467.053(d), Insurance Code, is amended  
11 to read as follows:

12 (d) The mediator's fees shall be split evenly and paid by  
13 the insurer or administrator and the facility-based provider or  
14 emergency care provider [~~physician~~].

15 SECTION 9. Sections 1467.054(b), (c), and (e), Insurance  
16 Code, are amended to read as follows:

17 (b) A request for mandatory mediation must be provided to  
18 the department on a form prescribed by the commissioner and must  
19 include:

- 20 (1) the name of the enrollee requesting mediation;  
21 (2) a brief description of the claim to be mediated;  
22 (3) contact information, including a telephone  
23 number, for the requesting enrollee and the enrollee's counsel, if  
24 the enrollee retains counsel;

25 (4) the name of the facility-based provider or  
26 emergency care provider [~~physician~~] and name of the insurer or  
27 administrator; and

1           (5) any other information the commissioner may require  
2 by rule.

3           (c) On receipt of a request for mediation, the department  
4 shall notify the facility-based provider or emergency care provider  
5 [~~physician~~] and insurer or administrator of the request.

6           (e) A dispute to be mediated under this chapter that does  
7 not settle as a result of a teleconference conducted under  
8 Subsection (d) must be conducted in the county in which the health  
9 care or medical services were rendered.

10           SECTION 10. Sections 1467.055(d), (h), and (i), Insurance  
11 Code, are amended to read as follows:

12           (d) If the enrollee is participating in the mediation in  
13 person, at the beginning of the mediation the mediator shall inform  
14 the enrollee that if the enrollee is not satisfied with the mediated  
15 agreement, the enrollee may file a complaint with:

16           (1) the Texas Medical Board or other appropriate  
17 regulatory agency against the facility-based provider or emergency  
18 care provider [~~physician~~] for improper billing; and

19           (2) the department for unfair claim settlement  
20 practices.

21           (h) On receipt of notice from the department that an  
22 enrollee has made a request for mediation that meets the  
23 requirements of this chapter, the facility-based provider or  
24 emergency care provider [~~physician~~] may not pursue any collection  
25 effort against the enrollee who has requested mediation for amounts  
26 other than copayments, deductibles, and coinsurance before the  
27 earlier of:

1 (1) the date the mediation is completed; or

2 (2) the date the request to mediate is withdrawn.

3 (i) A health care or medical service or supply provided by a  
4 facility-based provider or emergency care provider [~~physician~~] may  
5 not be summarily disallowed. This subsection does not require an  
6 insurer or administrator to pay for an uncovered service or supply.

7 SECTION 11. Sections 1467.056(a), (b), and (d), Insurance  
8 Code, are amended to read as follows:

9 (a) In a mediation under this chapter, the parties shall:

10 (1) evaluate whether:

11 (A) the amount charged by the facility-based  
12 provider or emergency care provider [~~physician~~] for the health care  
13 or medical service or supply is excessive; and

14 (B) the amount paid by the insurer or  
15 administrator represents the usual and customary rate for the  
16 health care or medical service or supply or is unreasonably low; and

17 (2) as a result of the amounts described by  
18 Subdivision (1), determine the amount, after copayments,  
19 deductibles, and coinsurance are applied, for which an enrollee is  
20 responsible to the facility-based provider or emergency care  
21 provider [~~physician~~].

22 (b) The facility-based provider or emergency care provider  
23 [~~physician~~] may present information regarding the amount charged  
24 for the health care or medical service or supply. The insurer or  
25 administrator may present information regarding the amount paid by  
26 the insurer or administrator.

27 (d) The goal of the mediation is to reach an agreement among



1 the enrollee, the facility-based provider or emergency care  
2 provider [~~physician~~], and the insurer or administrator, as  
3 applicable, as to the amount paid by the insurer or administrator to  
4 the facility-based provider or emergency care provider  
5 [~~physician~~], the amount charged by the facility-based provider or  
6 emergency care provider [~~physician~~], and the amount paid to the  
7 facility-based provider or emergency care provider [~~physician~~] by  
8 the enrollee.

9 SECTION 12. Section 1467.057(a), Insurance Code, is amended  
10 to read as follows:

11 (a) The mediator of an unsuccessful mediation under this  
12 chapter shall report the outcome of the mediation to the  
13 department, the Texas Medical Board or other appropriate regulatory  
14 agency, and the chief administrative law judge.

15 SECTION 13. Section 1467.058, Insurance Code, is amended to  
16 read as follows:

17 Sec. 1467.058. CONTINUATION OF MEDIATION. After a referral  
18 is made under Section 1467.057, the facility-based provider or  
19 emergency care provider [~~physician~~] and the insurer or  
20 administrator may elect to continue the mediation to further  
21 determine their responsibilities. Continuation of mediation under  
22 this section does not affect the amount of the billed charge to the  
23 enrollee.

24 SECTION 14. Section 1467.059, Insurance Code, is amended to  
25 read as follows:

26 Sec. 1467.059. MEDIATION AGREEMENT. The mediator shall  
27 prepare a confidential mediation agreement and order that states:

1 (1) the total amount for which the enrollee will be  
2 responsible to the facility-based provider or emergency care  
3 provider [~~physician~~], after copayments, deductibles, and  
4 coinsurance; and

5 (2) any agreement reached by the parties under Section  
6 1467.058.

7 SECTION 15. Section 1467.060, Insurance Code, is amended to  
8 read as follows:

9 Sec. 1467.060. REPORT OF MEDIATOR. The mediator shall  
10 report to the commissioner and the Texas Medical Board or other  
11 appropriate regulatory agency:

12 (1) the names of the parties to the mediation; and

13 (2) whether the parties reached an agreement or the  
14 mediator made a referral under Section 1467.057.

15 SECTION 16. Section 1467.151, Insurance Code, is amended to  
16 read as follows:

17 Sec. 1467.151. CONSUMER PROTECTION; RULES. (a) The  
18 commissioner and the Texas Medical Board or other regulatory  
19 agency, as appropriate, shall adopt rules regulating the  
20 investigation and review of a complaint filed that relates to the  
21 settlement of an out-of-network health benefit claim that is  
22 subject to this chapter. The rules adopted under this section must:

23 (1) distinguish among complaints for out-of-network  
24 coverage or payment and give priority to investigating allegations  
25 of delayed health care or medical care;

26 (2) develop a form for filing a complaint and  
27 establish an outreach effort to inform enrollees of the

1 availability of the claims dispute resolution process under this  
2 chapter;

3 (3) ensure that a complaint is not dismissed without  
4 appropriate consideration;

5 (4) ensure that enrollees are informed of the  
6 availability of mandatory mediation; and

7 (5) require the administrator to include a notice of  
8 the claims dispute resolution process available under this chapter  
9 with the explanation of benefits sent to an enrollee.

10 (b) The department and the Texas Medical Board or other  
11 appropriate regulatory agency shall maintain information:

12 (1) on each complaint filed that concerns a claim or  
13 mediation subject to this chapter; and

14 (2) related to a claim that is the basis of an enrollee  
15 complaint, including:

16 (A) the type of services that gave rise to the  
17 dispute;

18 (B) the type and specialty, if any, of the  
19 facility-based provider or emergency care provider [~~physician~~] who  
20 provided the out-of-network service;

21 (C) the county and metropolitan area in which the  
22 health care or medical service or supply was provided;

23 (D) whether the health care or medical service or  
24 supply was for emergency care; and

25 (E) any other information about:

26 (i) the insurer or administrator that the  
27 commissioner by rule requires; or

1 (ii) the facility-based provider or  
2 emergency care provider [~~physician~~] that the Texas Medical Board or  
3 other appropriate regulatory agency by rule requires.

4 (c) The information collected and maintained by the  
5 department and the Texas Medical Board and other appropriate  
6 regulatory agencies under Subsection (b)(2) is public information  
7 as defined by Section [552.002](#), Government Code, and may not include  
8 personally identifiable information or health care or medical  
9 information.

10 (d) A facility-based provider or emergency care provider  
11 [~~physician~~] who fails to provide a disclosure under Section  
12 [1467.051](#) or [1467.0511](#) is not subject to discipline by the Texas  
13 Medical Board or other appropriate regulatory agency for that  
14 failure and a cause of action is not created by a failure to  
15 disclose as required by Section [1467.051](#) or [1467.0511](#).

16 SECTION 17. Section [1467.101\(c\)](#), Insurance Code, is  
17 repealed.

18 SECTION 18. The changes in law made by this Act apply only  
19 to a claim for health care or medical services or supplies provided  
20 on or after January 1, 2018. A claim for health care or medical  
21 services or supplies provided before January 1, 2018, is governed  
22 by the law in effect immediately before the effective date of this  
23 Act, and that law is continued in effect for that purpose.

24 SECTION 19. This Act takes effect September 1, 2017.