

Amend the proposed floor substitute by ___ to CSSB 1264 (86R26267) as follows:

(1) In SECTION 2.01 of the substitute, in the recital (page 23, line 16), between "(3)," and "and", insert "(5),".

(2) In SECTION 2.01 of the substitute, in added Section 1467.001(1-a), Insurance Code (page 23, line 20), strike "or administrator".

(3) In SECTION 2.01 of the substitute, between added Sections 1467.001(4-b) and (6-a), Insurance Code (page 24, between lines 14 and 15), insert the following:

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

(4) In SECTION 2.01 of the substitute, in amended Section 1467.001(7), Insurance Code (page 24, line 23), strike "an arbitration [~~a mediation~~]" and substitute "a mediation or arbitration".

(5) In SECTION 2.02 of the substitute, strike amended Section 1467.002, Insurance Code (page 24, line 28 through page 25, line 6), and substitute the following:

Sec. 1467.002. APPLICABILITY OF CHAPTER. (a) This chapter, other than Subchapter B-1, applies to:

(1) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Chapter 1301; and

(2) a health benefit plan offered by [~~an administrator of a health benefit plan, other than~~] a health maintenance organization operating under Chapter 843 [~~plan, under Chapter 1551, 1575, or 1579~~].

(b) This chapter, other than Subchapter B, applies to an administrator of a health benefit plan, other than a health maintenance organization plan, under Chapter 1551, 1575, or 1579.

(6) In SECTION 2.02 of the substitute, in amended Section 1467.003(a), Insurance Code (page 25, lines 8-9), strike "and any

other appropriate regulatory agency [~~, and the chief administrative law judge~~]" and substitute "any other appropriate regulatory agency, and the chief administrative law judge".

(7) In SECTION 2.07 of the substitute, in amended Section 1467.051(a), Insurance Code (page 27, line 31 through page 28, line 1), strike ", health benefit plan issuer, or administrator" and substitute "or health benefit plan issuer".

(8) In SECTION 2.07 of the substitute, in amended Section 1467.051(a)(1), Insurance Code (page 28, line 5), strike "or administrator".

(9) In SECTION 2.07 of the substitute, strike amended Section 1467.051(a)(2), Insurance Code (page 28, lines 10-18), and substitute the following:

(2) the health benefit claim is for:

(A) emergency care; [~~or~~]

(B) a health care or medical service or supply provided by a facility-based provider in a facility that is a participating [~~preferred~~] provider;

(C) an out-of-network laboratory service; or

(D) an out-of-network diagnostic imaging service [~~that has a contract with the administrator~~].

(10) In SECTION 2.07 of the substitute, in added Section 1467.051(a-1), Insurance Code (page 28, line 19), strike "or administrator".

(11) In SECTION 2.07 of the substitute, in amended Section 1467.051(b), Insurance Code (page 28, lines 29-30), strike "~~[insurer]~~ or the administrator, as appropriate," and substitute "~~[insurer or the administrator, as appropriate]~~".

(12) In SECTION 2.07 of the substitute, in added Section 1467.051(f), Insurance Code (page 29, line 8), strike "or administrator".

(13) In SECTION 2.08 of the substitute, in added Section 1467.0515(a), Insurance Code (page 29, lines 16-17), strike ", health benefit plan issuer, or administrator" and substitute "or health benefit plan issuer".

(14) In SECTION 2.09 of the substitute, in added Section 1467.0545(d)(1), Insurance Code (page 30, line 22), strike "or

administrator".

(15) In SECTION 2.09 of the substitute, in added Section 1467.0555(a)(1), Insurance Code (page 31, lines 5-6), strike "or administrator".

(16) In SECTION 2.09 of the substitute, in added Section 1467.0555(a)(1)(B), Insurance Code (page 31, lines 12-13), strike "or administrator".

(17) In SECTION 2.09 of the substitute, in added Section 1467.0565(d), Insurance Code (page 31, line 28), strike "or administrator".

(18) In ARTICLE 2 of the substitute, strike SECTION 2.10 of the substitute (page 32, line 1 through page 32, line 28) and substitute the following appropriately numbered SECTIONS:

SECTION 2.__. Chapter 1467, Insurance Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. MANDATORY MEDIATION

Sec. 1467.081. AVAILABILITY OF MANDATORY MEDIATION. (a) An out-of-network provider or administrator may request mediation of a settlement of an out-of-network health benefit claim arising from a health benefit plan to which this subchapter applies if:

(1) there is an amount billed by the provider and unpaid by the administrator after copayments, deductibles, and coinsurance for which an enrollee may not be billed; and

(2) the health benefit claim is for:

(A) emergency care;

(B) a health care or medical service or supply provided by a facility-based provider in a facility that is a participating provider;

(C) an out-of-network laboratory service; or

(D) an out-of-network diagnostic imaging service.

(b) If a person requests mediation under this subchapter, the out-of-network provider, or the provider's representative, and the administrator shall participate in the mediation.

Sec. 1467.082. MEDIATOR QUALIFICATIONS. (a) Except as provided by Subsection (b), to qualify for an appointment as a mediator under this subchapter a person must have completed at

least 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution organization or other dispute resolution organization approved by the chief administrative law judge.

(b) A person not qualified under Subsection (a) may be appointed as a mediator on agreement of the parties.

(c) A person may not act as mediator for a claim settlement dispute if the person has been employed by, consulted for, or otherwise had a business relationship with an administrator of a health benefit plan that is subject to this subchapter or a physician, health care practitioner, or other health care provider during the three years immediately preceding the request for mediation.

Sec. 1467.083. APPOINTMENT OF MEDIATOR; FEES. (a) A mediation shall be conducted by one mediator.

(b) The chief administrative law judge shall appoint the mediator through a random assignment from a list of qualified mediators maintained by the State Office of Administrative Hearings.

(c) Notwithstanding Subsection (b), a person other than a mediator appointed by the chief administrative law judge may conduct the mediation on agreement of all of the parties and notice to the chief administrative law judge.

(d) The mediator's fees shall be split evenly and paid by the administrator and the out-of-network provider.

Sec. 1467.084. REQUEST AND PRELIMINARY PROCEDURES FOR MANDATORY MEDIATION. (a) An out-of-network provider or administrator may request mandatory mediation under this subchapter.

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

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

(4) the name of the out-of-network provider and name of the administrator; and

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

(c) On receipt of a request for mediation, the department shall notify the out-of-network provider or the administrator of the request.

(d) In an effort to settle the claim before mediation, all parties must participate in an informal settlement teleconference not later than the 30th day after the date on which a person submits a request for mediation under this subchapter.

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

Sec. 1467.085. CONDUCT OF MEDIATION; CONFIDENTIALITY. (a) A mediator may not impose the mediator's judgment on a party about an issue that is a subject of the mediation.

(b) A mediation session is under the control of the mediator.

(c) Except as provided by this chapter, the mediator must hold in strict confidence all information provided to the mediator by a party and all communications of the mediator with a party.

(d) A party must have an opportunity during the mediation to speak and state the party's position.

(e) Except on the agreement of the participating parties, a mediation may not last more than four hours.

(f) A mediation shall be held not later than the 180th day after the date of the request for mediation.

(g) A health care or medical service or supply provided by an out-of-network provider may not be summarily disallowed. This subsection does not require an administrator to pay for an uncovered service or supply.

(h) A mediator may not testify in a proceeding, other than a proceeding to enforce this chapter, related to the mediation agreement.

Sec. 1467.086. MATTERS CONSIDERED IN MEDIATION; AGREED

RESOLUTION. (a) In a mediation under this subchapter, the parties shall evaluate whether:

(1) the amount charged by the out-of-network provider for the health care or medical service or supply is excessive; and

(2) the amount paid by the administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low.

(b) The out-of-network provider may present information regarding the amount charged for the health care or medical service or supply. The administrator may present information regarding the amount paid by the administrator.

(c) Nothing in this chapter prohibits mediation of more than one claim between the parties during a mediation.

(d) The goal of the mediation is to reach an agreement between the out-of-network provider and the administrator as to the amount paid by the administrator to the provider and the amount charged by the provider.

Sec. 1467.087. NO AGREED RESOLUTION. (a) The mediator of an unsuccessful mediation under this subchapter shall report the outcome of the mediation to the department, the Texas Medical Board or other appropriate regulatory agency, and the chief administrative law judge.

(b) The chief administrative law judge shall enter an order of referral of a matter reported under Subsection (a) to a special judge under Chapter 151, Civil Practice and Remedies Code, that:

(1) names the special judge on whom the parties agreed or appoints the special judge if the parties did not agree on a judge;

(2) states the issues to be referred and the time and place on which the parties agree for the trial;

(3) requires each party to pay the party's proportionate share of the special judge's fee; and

(4) certifies that the parties have waived the right to trial by jury.

(c) A trial by the special judge selected or appointed as described by Subsection (b) must proceed under Chapter 151, Civil Practice and Remedies Code, except that the special judge's verdict

is not relevant or material to any other billing dispute and has no precedential value.

(d) Notwithstanding any other provision of this section, Section 151.012, Civil Practice and Remedies Code, does not apply to a mediation under this subchapter.

Sec. 1467.088. CONTINUATION OF MEDIATION. After a referral is made under Section 1467.087, the out-of-network provider and the administrator may elect to continue the mediation to further determine their responsibilities.

Sec. 1467.089. MEDIATION AGREEMENT. The mediator shall prepare a confidential mediation agreement and order that states any agreement reached by the parties under Section 1467.088.

Sec. 1467.090. REPORT OF MEDIATOR. The mediator shall report to the commissioner and the Texas Medical Board or other appropriate regulatory agency:

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

(2) whether the parties reached an agreement or the mediator made a referral under Section 1467.087.

SECTION 2.____. Subchapter C, Chapter 1467, Insurance Code, is amended to read as follows:

SUBCHAPTER C. BAD FAITH PARTICIPATION [~~MEDIATION~~]

Sec. 1467.101. BAD FAITH. (a) The following conduct constitutes bad faith participation [~~mediation~~] for purposes of this chapter:

(1) failing to participate in the informal settlement teleconference under Section 1467.051(h), arbitration under Subchapter B, or mediation under Subchapter B-1;

(2) failing to provide information the arbitrator or mediator believes is necessary to facilitate a decision or [an] agreement; [or]

(3) failing to designate a representative participating in the arbitration or mediation with full authority to enter into any [mediated] agreement; or

(4) failing to appear for the arbitration or mediation.

(b) Failure to reach an agreement under Subchapter B-1 is not conclusive proof of bad faith participation [~~mediation~~].

Sec. 1467.102. PENALTIES. (a) Bad faith participation or otherwise failing to comply with Subchapter B [~~mediation, by a party other than the enrollee,~~] is grounds for imposition of an administrative penalty by the regulatory agency that issued a license or certificate of authority to the party who committed the violation.

(b) Except for good cause shown, on a report of a mediator and appropriate proof of bad faith participation under Subchapter B-1 [~~mediation~~], the regulatory agency that issued the license or certificate of authority shall impose an administrative penalty.

(19) In SECTION 2.11 of the substitute, in amended Section 1467.151(b), Insurance Code (page 33, lines 21-22), strike "or arbitration [~~mediation~~]" substitute ", arbitration, or mediation".

(20) In SECTION 3.03 of the substitute, in the repealer (page 36, line 9), strike Subdivision (2) and renumber subdivisions of the repealer accordingly.

(21) Renumber SECTIONS of the substitute accordingly.