

By: Lucio III

H.B. No. 3484

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to conduct of insurers providing preferred provider  
3 benefit plans with respect to physician and health care provider  
4 contracts and claims.

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

6 SECTION 1. Sections 1301.066 and 1301.103, Insurance Code,  
7 are amended to read as follows:

8 Sec. 1301.066. RETALIATION AGAINST PREFERRED PROVIDER  
9 PROHIBITED. (a) An insurer may not engage in any retaliatory action  
10 against a physician or health care provider [~~, including terminating~~  
11 ~~the physician's or provider's participation in the preferred~~  
12 ~~provider benefit plan or refusing to renew the physician's or~~  
13 ~~provider's contract,~~] because the physician or provider has:

14 (1) on behalf of an insured, reasonably filed a  
15 complaint against the insurer; or

16 (2) appealed a decision of the insurer.

17 (b) A retaliatory action under Subsection (a) includes:

18 (1) terminating the physician's or provider's  
19 participation in the preferred provider benefit plan;

20 (2) refusing to renew the physician's or provider's  
21 contract;

22 (3) implementing measurable penalties in the contract  
23 negotiation process; and

24 (4) engaging in an unfair or deceptive contract

1 negotiation practice.

2           Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. (a)  
3 Except as provided by Sections 1301.104 and 1301.1054, not later  
4 than the 45th day after the date an insurer receives a clean claim  
5 from a preferred provider in a nonelectronic format or the 30th day  
6 after the date an insurer receives a clean claim from a preferred  
7 provider that is electronically submitted, the insurer shall make a  
8 determination of whether the claim is payable and:

9           (1) if the insurer determines the entire claim is  
10 payable, pay the total amount of the claim in accordance with the  
11 contract between the preferred provider and the insurer;

12           (2) if the insurer determines a portion of the claim is  
13 payable, pay the portion of the claim that is not in dispute and  
14 notify the preferred provider in writing why the remaining portion  
15 of the claim will not be paid; or

16           (3) if the insurer determines that the claim is not  
17 payable, notify the preferred provider in writing why the claim  
18 will not be paid.

19           (b) An insurer shall provide notice under Subsection (a)  
20 electronically if the preferred provider's clean claim was  
21 electronically submitted.

22           SECTION 2. Section 1301.105, Insurance Code, is amended by  
23 amending Subsection (d) and adding Subsection (e) to read as  
24 follows:

25           (d) If the preferred provider does not supply information  
26 reasonably requested by the insurer in connection with the audit,  
27 the insurer shall [~~may~~]:

1           (1) notify the provider in writing that the provider  
2 must provide the information not later than the 45th day after the  
3 date of the notice or forfeit the amount of the claim; and

4           (2) if the provider does not provide the information  
5 required by this section, recover the amount of the claim.

6           (e) An insurer shall make a request or provide information  
7 under this section electronically if the preferred provider's clean  
8 claim was electronically submitted.

9           SECTION 3. Sections 1301.1051 and 1301.1052, Insurance  
10 Code, are amended to read as follows:

11           Sec. 1301.1051. COMPLETION OF AUDIT. (a) The insurer must  
12 complete an audit under Section 1301.105 on or before the 180th day  
13 after the date the clean claim is received by the insurer, and any  
14 additional payment due a preferred provider or any refund due the  
15 insurer shall be made not later than the 30th day after the  
16 completion of the audit.

17           (b) An insurer may not recover a payment on an audited claim  
18 until a final audit is completed.

19           (c) An insurer shall provide written notice to the preferred  
20 provider of the insurer's failure to complete an audit in the time  
21 required by Subsection (a) not later than the 15th day after the  
22 date on which the insurer is required to complete the audit under  
23 that subsection.

24           Sec. 1301.1052. PREFERRED PROVIDER APPEAL AFTER AUDIT. (a)  
25 If a preferred provider disagrees with a refund request made by an  
26 insurer based on an audit under Section 1301.105, the insurer shall  
27 provide the provider with an opportunity to appeal in accordance

1 with this section, and the insurer may not attempt to recover the  
2 payment until all appeal rights are exhausted.

3 (b) An insurer shall provide a reasonable mechanism for an  
4 appeal requested under Subsection (a). The review mechanism must  
5 incorporate, in an advisory role only, a review panel.

6 (c) A review panel described by Subsection (b) must be  
7 composed of at least three preferred provider representatives  
8 selected by the insurer from a list of preferred providers. The  
9 preferred providers contracting with the insurer in the applicable  
10 service area shall provide the list of preferred provider  
11 representatives to the insurer.

12 (d) On request, the insurer shall provide to the affected  
13 preferred provider:

- 14 (1) the panel's composition and recommendation; and  
15 (2) a written explanation of the insurer's  
16 determination, if that determination is contrary to the panel's  
17 recommendation.

18 SECTION 4. Subchapter C, Chapter 1301, Insurance Code, is  
19 amended by adding Section 1301.10525 to read as follows:

20 Sec. 1301.10525. DEPARTMENT REVIEW OF AUDITS. (a) The  
21 commissioner by rule shall establish procedures for a preferred  
22 provider to submit a request for the department to review an audit  
23 conducted by an insurer under this subchapter. The department  
24 review of an audit is a contested case under Chapter 2001,  
25 Government Code.

26 (b) If the department determines that an audit for which a  
27 preferred provider requested review resulted in unreasonable costs

1 for the preferred provider, unnecessarily delayed or prevented  
2 payment of a claim, or otherwise violated this subchapter or rules  
3 adopted under this subchapter, the department shall:

4 (1) award compensatory damages to the preferred  
5 provider incurred as a result of the audit; and

6 (2) order the insurer to pay to the department the  
7 costs incurred by the department in reviewing the audit.

8 SECTION 5. Section 1301.132, Insurance Code, is amended by  
9 adding Subsections (c), (d), and (e) to read as follows:

10 (c) An insurer shall provide a reasonable mechanism for an  
11 appeal requested under Subsection (b). The review mechanism must  
12 incorporate, in an advisory role only, a review panel.

13 (d) A review panel described by Subsection (c) must be  
14 composed of at least three preferred provider representatives  
15 selected by the insurer from a list of preferred providers. The  
16 preferred providers contracting with the insurer in the applicable  
17 service area shall provide the list of preferred provider  
18 representatives to the insurer.

19 (e) On request, the insurer shall provide to the affected  
20 preferred provider:

21 (1) the panel's composition and recommendation; and

22 (2) a written explanation of the insurer's  
23 determination, if that determination is contrary to the panel's  
24 recommendation.

25 SECTION 6. (a) The changes in law made by this Act apply to  
26 a claim for payment made on or after the effective date of this Act  
27 unless the claim is made under a contract that was entered into

1 before the effective date of this Act and that, at the time the  
2 claim is made, has not been renewed or was last renewed before the  
3 effective date of this Act.

4 (b) A claim made before the effective date of this Act or  
5 made on or after the effective date of this Act under a contract  
6 described by Subsection (a) of this section is governed by the law  
7 as it existed immediately before the effective date of this Act, and  
8 that law is continued in effect for that purpose.

9 SECTION 7. This Act takes effect September 1, 2019.