

BILL ANALYSIS

Senate Research Center
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S.B. 1298
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' dispute resolution process for out-of-network facilities is broken, due to certain parties' behavior exhibited during the mediation process. Even mediators have complained about the inability to strike an accord, due to inappropriate representatives being sent to the mediation, as these representatives lack the authority to negotiate on behalf of their employer, or one of the parties refuses to supply facts to substantiate their proposed rate of reimbursement for the health care claim.

S.B. 1264 from the 86th Legislature was a solid first step in establishing a dispute resolution process for health care claims in Texas. However, from its effective date of September 1, 2019, to now (approximately 3.5 years), it is clear that the law needs to be modified to address what is happening. The dispute resolution process created by S.B. 1264 was an attempt to bring two parties together in reaching an agreed settlement outside of a costly courtroom environment.

In our state's dispute resolution process, individual providers can avail themselves of binding arbitration. However, out-of-network facilities must go through a non-binding mediation process. Because parties have shown no intention of fully participating in the mediation process, but repeatedly use it as a dilatory tactic to delay any potential reimbursement to facilities (and their doctors who have performed the services), the system needs to be modified.

Some members of the legislature might be aware that a bad faith finding may be declared by the mediator under current law. However, it is rarely declared because the mediator wants to be selected for the next mediation. Therefore, this bill provides for a de facto bad faith finding for the reasons described and the ability of either party at that point in time to request arbitration.

S.B. 1298 will provide balance by ensuring compliance with the current mediation system. The federal No Surprise Act (NSA) only utilizes arbitration. By contrast, S.B. 1298 keeps the current mediation process firmly in place but provides assurances that all parties will participate fully in good faith, as was originally intended by the legislature.

As proposed, S.B. 1298 amends current law relating to requests for arbitration of certain billing disputes between health benefit plan issuers or administrators and out-of-network facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1467.081, Insurance Code, as follows:

Sec. 1467.081. APPLICABILITY OF SUBCHAPTER. Creates an exception under Section 1467.103.

SECTION 2. Amends Section 1467.101, Insurance Code, by adding Subsection (c), as follows:

(c) Provides that the following conduct constitutes bad faith participation with respect to mediation under Subchapter B (Mandatory Mediation for Out-of-Network Facilities): failing to provide the material facts necessary to conduct a meaningful mediation process or failing to send to mediation a representative who is authorized to negotiate on the party's behalf.

SECTION 3. Amends Subchapter C, Chapter 1467, Insurance Code, by adding Section 1467.103, as follows:

Sec. 1467.103. REQUEST FOR ARBITRATION. (a) Provides that bad faith participation with respect to mediation under Subchapter B by a party to the mediation is grounds for the opposing party to request arbitration under Subchapter B-1 (Mandatory Binding Arbitration for Other Providers).

(b) Provides that, on a request for arbitration under Subsection (a):

(1) the out-of-network facility that is a party to the mediation is considered an out-of-network provider for purposes of the arbitration under Subchapter B-1; and

(2) the Texas Department of Insurance is required to select an arbitrator and to require the arbitrator to make a determination not later than the 30th day after the date the arbitrator receives the information necessary to make the determination under Section 1467.083 (Issue to Be Addressed; Basis for Determination).

(c) Requires the health benefit plan issuer or administrator, not later than the 30th day after the date an arbitrator's written decision is provided to the parties under Section 1467.088 (Decision), to pay the out-of-network facility any additional amount necessary to satisfy the award.

SECTION 4. Makes application of Section 1467.103, Insurance Code, as added by this Act, prospective to January 1, 2024.

SECTION 5. Effective date: September 1, 2023.