

By: Smithee

H.B. No. 1638

A BILL TO BE ENTITLED

AN ACT

relating to nonpreferred provider claims under a preferred provider benefit plan related to emergency care.

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

SECTION 1. Chapter 1301, Insurance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. NONPREFERRED PROVIDER CLAIMS RELATED TO EMERGENCY CARE PROVIDED TO INSUREDS; ARBITRATION

Sec. 1301.251. DEFINITIONS. In this subchapter:

(1) "Chief administrative law judge" means the chief administrative law judge of the State Office of Administrative Hearings.

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

Sec. 1301.252. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to health care services, including emergency care, in which physician fees are subject to schedules or other monetary limitations under any other law, including workers' compensation under Title 5, Labor Code.

(b) This subchapter applies only to emergency care provided:

(1) to an insured;

(2) within a hospital, freestanding emergency medical care facility, or similar facility that is a preferred provider;

1 and

2 (3) by a facility-based physician or health care  
3 provider who is a nonpreferred provider.

4 (c) This subchapter does not apply to:

5 (1) the Employees Retirement System of Texas or  
6 another entity issuing or administering a basic coverage plan under  
7 Chapter 1551;

8 (2) the Teacher Retirement System of Texas or another  
9 entity issuing or administering a basic plan under Chapter 1575 or a  
10 health coverage plan under Chapter 1579; or

11 (3) The Texas A&M University System or The University  
12 of Texas System or another entity issuing or administering basic  
13 coverage under Chapter 1601.

14 Sec. 1301.253. PAYMENT OF NONPREFERRED PROVIDER BILL.  
15 Notwithstanding Section [1301.005](#) or any other law, an insurer shall  
16 pay a nonpreferred provider a reasonable amount for emergency care  
17 provided by the nonpreferred provider to an insured.

18 Sec. 1301.254. HOLD HARMLESS FOR INSURED. A nonpreferred  
19 provider may not bill an insured eligible to receive services under  
20 a preferred provider benefit plan, and the insured is not liable to  
21 the provider, for emergency care provided in a hospital,  
22 freestanding emergency medical care facility, or similar facility  
23 that is a preferred provider except for any applicable copayment,  
24 coinsurance, or deductible that would be owed if the provider was a  
25 preferred provider under the plan.

26 Sec. 1301.255. ARBITRATOR QUALIFICATIONS. (a) Except as  
27 provided by Subsection (b), to qualify for an appointment as an

1 arbitrator under this subchapter, a person must have completed at  
2 least 40 classroom hours of training in dispute resolution  
3 techniques in a course conducted by an alternative dispute  
4 resolution organization or other dispute resolution organization  
5 approved by the chief administrative law judge.

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

8 (c) A person may not act as an arbitrator for a claim  
9 settlement dispute if the person has been employed by, consulted  
10 for, or otherwise had a business relationship with an insurer  
11 offering the preferred provider benefit plan or a health care  
12 provider during the three years immediately preceding the request  
13 for arbitration.

14 Sec. 1301.256. APPOINTMENT OF ARBITRATOR. (a) An  
15 arbitration under this subchapter shall be conducted by one  
16 arbitrator.

17 (b) The chief administrative law judge shall appoint the  
18 arbitrator through a random assignment from a list of qualified  
19 arbitrators maintained by the State Office of Administrative  
20 Hearings.

21 (c) Notwithstanding Subsection (b), a person other than an  
22 arbitrator appointed by the chief administrative law judge may  
23 conduct the arbitration on agreement of all of the parties and  
24 notice to the chief administrative law judge.

25 Sec. 1301.257. REQUEST AND PRELIMINARY PROCEDURES FOR  
26 ARBITRATION. (a) If a dispute arises over the nonpreferred  
27 provider's fee or the insurer's payment to the provider, the

1 provider or insurer may request arbitration under this subchapter.

2 (b) A request for arbitration must be provided to the  
3 department on a form prescribed by the commissioner and must  
4 include:

5 (1) the name of the nonpreferred provider and insurer;

6 (2) a brief description of the claim to be resolved,  
7 including the nonpreferred provider's fee and the insurer's payment  
8 to the provider;

9 (3) contact information, including a telephone  
10 number, for the requesting party and the party's counsel, if the  
11 party retains counsel; and

12 (4) any other information the commissioner may require  
13 by rule.

14 (c) On receipt of a request for arbitration, the department  
15 shall notify the nonpreferred provider, insurer, and insured of the  
16 request. In the notice to the insured, the department must explain  
17 in plain language the amount billed by the provider, the amount paid  
18 by the insurer, that either the provider or insurer has requested  
19 arbitration, and that the insured has a right to participate in the  
20 informal settlement teleconference or arbitration.

21 (d) In an effort to settle the claim before arbitration, the  
22 nonpreferred provider and insurer shall participate in an informal  
23 settlement teleconference not later than the 30th day after the  
24 date on which a party submits a request for arbitration under this  
25 section. The insured may elect to participate in the  
26 teleconference.

27 (e) A claim to be resolved under this subchapter that does

1 not settle as a result of a teleconference conducted under  
2 Subsection (d) must be referred to the State Office of  
3 Administrative Hearings by the department, and an arbitration  
4 hearing must be conducted in the county in which the medical  
5 services were rendered.

6 (f) The State Office of Administrative Hearings may  
7 implement measures, including an additional informal settlement  
8 teleconference, to encourage early and informal resolution to a  
9 billing dispute before arbitration commences.

10 (g) The insured may elect to participate in the arbitration.

11 Sec. 1301.258. CONDUCT OF ARBITRATION. (a) In arbitration  
12 conducted under this subchapter, an arbitrator shall determine  
13 whether the nonpreferred provider's billed charge or the insurer's  
14 payment to the provider is the reasonable amount to be paid for the  
15 emergency care that is the basis for the claim. In determining the  
16 amount to be paid, the arbitrator shall consider the criteria under  
17 Section 1301.259.

18 (b) An arbitrator shall determine the amount to be paid not  
19 later than the 30th day after the date the arbitrator receives the  
20 claim.

21 (c) If an arbitrator determines, based on the nonpreferred  
22 provider's billed charge and insurer's payment, that a settlement  
23 between the provider and insurer is reasonably likely or that both  
24 the provider's billed charge and insurer's payment represent  
25 unreasonable extremes, then the arbitrator may require the parties  
26 to negotiate in good faith for a settlement. The arbitrator may  
27 grant the parties not more than 10 business days for the

negotiation, which run concurrently with the 30-day period for arbitration.

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

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

(f) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses;  
and

(B) the production of books, records, and other evidence relevant to a claim presented for arbitration.

(g) The determination of an arbitrator is binding on the nonpreferred provider and insurer and is admissible in court or in an administrative proceeding.

Sec. 1301.259. CRITERIA FOR DETERMINING PAYMENT AMOUNT. In determining the appropriate amount to be paid for the emergency care, the arbitrator shall consider all relevant factors, including:

(1) whether there is a gross disparity between the billed charge for the same services rendered by the nonpreferred provider as compared to:

1           (A) payments to the provider for the same  
2 services rendered by the provider to other patients in preferred  
3 provider benefit plans in which the provider is a nonpreferred  
4 provider; and

5           (B) payments by the insurer to reimburse  
6 similarly qualified nonpreferred providers for the same services in  
7 the same region;

8           (2) the level of training, education, and experience  
9 of the nonpreferred provider;

10           (3) the nonpreferred provider's usual charge for  
11 comparable services with regard to insureds in preferred provider  
12 benefit plans in which the provider is a nonpreferred provider;

13           (4) the circumstances and complexity of the particular  
14 case, including time and place of the services;

15           (5) individual patient characteristics; and

16           (6) the usual and customary cost of the service.

17       Sec. 1301.260. PAYMENT FOR ARBITRATION COSTS. (a) If an  
18 arbitrator determines the insurer's payment as the amount to be  
19 paid, the nonpreferred provider shall pay the arbitration costs.

20       (b) If an arbitrator determines the nonpreferred provider's  
21 billed charge as the amount to be paid, the insurer shall pay the  
22 arbitration costs.

23       (c) If good faith negotiation under Section 1301.258(c)  
24 results in a settlement between the nonpreferred provider and  
25 insurer, the provider and insurer shall evenly divide and share the  
26 costs of arbitration.

27       SECTION 2. Subchapter A, Chapter 1467, Insurance Code, is

1 amended by adding Section 1467.0021 to read as follows:

2       Sec. 1467.0021. CERTAIN CLAIMS EXCLUDED. This chapter does  
3 not apply to a claim with respect to which Subchapter F, Chapter  
4 1301, applies.

5       SECTION 3. The change in law made by this Act applies only  
6 to a payment for emergency care provided by a nonpreferred provider  
7 at a health care facility that is a preferred provider on or after  
8 January 1, 2016. Payment for emergency care provided before  
9 January 1, 2016, is governed by the law in effect immediately before  
10 the effective date of this Act, and that law is continued in effect  
11 for that purpose.

12       SECTION 4. This Act takes effect September 1, 2015.