2018 Regular Session

HOUSE BILL NO. 439

BY REPRESENTATIVE TALBOT

INSURANCE/HEALTH: Provides relative to insurance claims for air ambulance services

AN ACT

To enact Subpart E of Part II of Chapter 6 of Title 22 of the Revised Statutes of 1950, to be comprised of R.S. 22:1885.1 through 1885.6, relative to insurance coverage for air ambulance services; to provide for legislative findings; to provide for purpose and scope; to provide for definitions; to provide for payment of air ambulance claims; to prohibit balance billing for out-of-network air ambulance services; to establish a process for independent dispute resolution; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart E of Part II of Chapter 6 of Title 22 of the Revised Statutes of 1950, comprised of R.S. 22:1885.1 through 1885.6, is hereby enacted to read as follows:

SUBPART E. AIR AMBULANCE INSURANCE CLAIMS

§1885.1. Legislative findings; purpose; scope

A. The legislature finds all of the following:

(1) Air ambulance services provide a necessary, and sometimes lifesaving, means of transporting medical patients in both emergency and nonemergency situations.

(2) Adequate access to air ambulance services is essential.

(3) In some cases, the difference between charges assessed by out-of-network air ambulance service providers and reimbursements by consumers' health benefit plans have resulted in high balance bills to consumers.

(4) The federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which has been interpreted by some courts as applying to air ambulance service provider charges.

B. The purpose of this Subpart is to protect consumers who are covered by commercial insurance from overall disproportionate financial responsibility and liability for using out-of-network air ambulance services instead of in-network air ambulance services in an emergency situation, including balance bills from out-of-network air ambulance service providers in a manner that is not preempted by the federal Employee Retirement Income Security Act of 1974 or the Airline Deregulation Act.

C. This Subpart applies to all health insurance issuers licensed, operating, or otherwise doing business in this state and licensed air ambulance service providers.

§1885.2. Definitions

As used in this Subpart, the following meanings apply:

(1) "Balance bill" and "balance billing" means the difference between the amount charged by an air ambulance service provider and any amount paid by a health benefit plan plus the covered person's copayment, deductible, or coinsurance amount applicable to a specific air ambulance transport.

(2) "Commissioner" means the commissioner of insurance.

(3) "Covered person" means an individual covered by a health benefit plan issued by a health insurance issuer licensed, operating, or otherwise authorized to do business in this state.

(4) "Department" means the Department of Insurance.

(5) "Disputed air ambulance service provider charge" means the amount remaining after payment by a health benefit plan of the amount provided for in R.S. 22:1885.4.

(6)(a) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services.

(b) "Health benefit plan" shall include health benefit plans issued by health insurance issuers as well as self-funded health benefit plans.

(c) "Health benefit plan" shall not include any of the following:

(i) Managed care programs operating as part of the Louisiana medical assistance program.

(ii) Medicaid.

(iii) LaCHIP.

(iv) Medicare.

(v) Excepted benefit products as defined in 42 U.S.C. 300gg-91(c).

(7) "Health insurance issuer" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, including through a health benefit plan as defined in this Section. "Health insurance issuer" shall include a sickness and accident insurance company, a health maintenance organization, a preferred provider organization or any similar entity, or any other entity providing a plan of health insurance or health benefits.

(8) "LaCHIP" means the state child health plan administered by the Louisiana Department of Health pursuant to R.S. 46:976.

(9) "Medicaid" and "medical assistance program" mean the medical assistance program provided for in Title XIX of the federal Social Security Act as administered by the Louisiana Department of Health.

(10) "Medicare" means coverage under Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(11) "Program" means the program of independent dispute resolution for disputed air ambulance service charges established pursuant to this Subpart.

(12) "Registered air ambulance service provider" means an air ambulance service provider licensed by the Louisiana Department of Health that has registered with the Department of Insurance to participate in the voluntary dispute resolution process established pursuant to this Subpart.

§1885.3. Reimbursement; network adequacy; medical necessity

A. A health benefit plan that does not have an adequate network of air ambulance service providers in this state shall not use an allowed amount for air ambulance reimbursement that is less than the applicable average rates published by registered air ambulance service providers. The department shall determine the average rates on an annual basis.

B. For purposes of this Subpart, a patient transport shall be deemed to be medically necessary by health benefit plans if requested by a neutral third party licensed or certified medical professional or first responder and determined by that neutral third party licensed or certified medical professional or first responder to be conducted by an air ambulance service provider without regard to the patient's ability to pay.

§1885.4. Hold harmless

A. If a covered person, after being picked up in this state, receives services from a registered air ambulance service provider that is not part of the covered person's health benefit plan's network, the health benefit plan shall assume the covered person's responsibility for amounts charged by the registered air ambulance service provider other than any applicable copayments, coinsurance, and deductibles.

B. A health benefit plan that has assumed a covered person's responsibility as required pursuant to Subsection A of this Section shall notify the air ambulance service of that assumption no later than the date the health benefit plan issues payment pursuant to Subsection D of this Section.

C. If a registered air ambulance service provider receives notice pursuant to Subsection B of this Section, with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the registered air ambulance service shall

not do any of the following in connection with the amount assumed by the health benefit plan pursuant to Subsection A of this Section:

(1) Bill, collect, or attempt to collect from the covered person.

(2) Report to a consumer reporting agency that the covered person is delinquent.

(3) Obtain a lien on the covered person's property.

(4) Take any other action adverse to the covered person.

D.(1) Subject to the provisions of the covered person's health benefit plan contract, a health benefit plan is responsible for payment directly to the air ambulance service provider or denial of a claim for air ambulance services within thirty days after receipt of a proof of loss. Within this time frame, the health benefit plan shall notify the covered person and the registered air ambulance service provider of the amount of deductible, coinsurance, or copayment that is the covered person's responsibility to pay.

(2) The health benefit plan responsible pursuant to Subsection A of this Section shall make payment based on any of the following:

(a) The billed charges of the registered air ambulance service.

(b) Another amount negotiated with the registered air ambulance service.

(c) The maximum amount the health benefit plan would pay to an in-network air ambulance service provider for the services performed, unless R.S. 22:1885.3(A) is applicable, in which case the average amount as determined by the department.

E. If, after payment is made pursuant to Paragraph (D)(2) of this Section, the health benefit plan or registered air ambulance service provider disputes the reasonableness of that payment, the health benefit plan or registered air ambulance service provider shall invoke the independent dispute resolution process established pursuant to this Subpart, if good-faith settlement negotiations fail to resolve the dispute.

§1885.5. Independent dispute resolution program; registration; reporting

A.(1) The department shall establish and administer a program of independent dispute resolution for disputed air ambulance service charges.

(2) The department shall promulgate rules, forms, and procedures for the implementation and administration of the program.

(3) The department may charge any fees necessary to cover the costs of implementation and administration.

(4) The department shall maintain a list of qualified reviewers.

B.(1)(a) By January 1 of each year, air ambulance service providers wishing to participate in the independent dispute resolution program established pursuant to this Section shall register with the department in a manner and providing all information as required by the department.

(b) Registration shall automatically renew quarterly unless the registered air ambulance service provider gives notice to the department of the intent to not renew the registration not less than thirty days prior to the end of the quarter.

(c) All disputed charges incurred during the quarter of a registered air ambulance service provider's registration shall be subject to independent dispute resolution.

(2) An air ambulance service provider who registers with the department pursuant to this Section shall acknowledge that, notwithstanding the federal Airline Deregulation Act, the air ambulance service provider voluntarily agrees to participate in the independent dispute resolution program established pursuant to this Section. The voluntary agreement shall constitute a waiver of the air ambulance service provider's ability to challenge the program based on the federal Airline Deregulation Act with respect to disputed charges subject to independent dispute resolution pursuant to Subsection B of this Section.

(3) As a further condition of participation in the program, the registered air ambulance provider shall do both of the following:

(a) Publish the air ambulance transport rates charged by the air ambulance provider in this state.

(b) Provide de-identified, itemized billings for each of the air ambulance provider's transports in this state.

(4) The department shall keep and maintain records of each independent dispute resolution proceeding.

(5)(a) The department shall analyze the results of the independent dispute resolution proceedings, as well as the information submitted pursuant to Paragraph (3) of this Subsection each year.

(b) The department shall issue a report annually, the contents of which shall include but not be limited to all of the following:

(i) The overall aggregate statistics of the program for the year.

(ii) The de-identified results of all disputes decided by each independent reviewer through the program.

(iii) The number of disputes settled between the parties.

(iv) An analysis of financial and market trends of the air ambulance service provider claims.

(v) Recommended changes to improve the program.

(6) The report shall be made public through, at minimum, posting on the website of the department.

C.(1) The sole issue to be considered and determined in an independent dispute resolution proceeding is the reasonable charge for the air ambulance service provided.

(2) The basis for this determination shall include but not be limited to the overall fixed and variable cost for providing the air ambulance services including all of the following:

(a) Costs of maintaining aircraft, hangar, and crew facilities.

(b) Compensation for pilots and flight crew, taking into consideration training and qualifications.

(c) Overhead.

(d) Insurance.

(e) Fuel.

(f) Costs attributable to any medical services provided in-flight.

(g) Costs associated with maintaining continuous readiness.

(h) The cost of uncompensated care and undercompensated care.

(i) A reasonable profit.

§1885.6. Independent dispute resolution; procedures

A. Either the registered air ambulance service provider or the health benefit plan may request adjudication of a disputed charge by submitting a request for independent dispute resolution on forms or in any manner as prescribed by the department. The request shall include the amount in dispute and a brief description of the service provided. The requesting party shall copy the other party on the submission to the department.

B. The commissioner shall establish an application process and fee schedule for independent reviewers.

C. If the parties have not designated an independent reviewer by mutual agreement within thirty days of the request for independent dispute resolution, the commissioner shall select an independent reviewer from the department's list of qualified reviewers.

D.(1) To be eligible to serve as an independent reviewer, an individual shall be knowledgeable and experienced in applicable principles of contract and insurance law and the healthcare industry generally.

(2)(a) In approving an individual as an independent reviewer, the commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an independent dispute resolution procedure.

(b) A conflict of interest shall include but is not limited to current or recent ownership or employment of either the individual or a close family member in a

health benefit plan, a healthcare provider, or an air ambulance service provider that may be involved in an independent dispute resolution procedure.

(3) The commissioner shall immediately terminate the approval of an independent reviewer who no longer meets the requirements to serve as an independent reviewer.

E.(1) Either party to an independent dispute resolution proceeding may request an oral hearing.

(2) If no oral hearing is requested, the independent reviewer shall set a date for the submission of all information to be considered by the independent reviewer.

(3) Each party to the independent dispute resolution shall submit a binding award amount. The independent reviewer shall choose one party's or the other's binding award amount based on which amount the independent reviewer determines to be closest to the reasonable charge for air ambulance services provided in accordance with R.S. 22:1885.5(C), with no deviation.

(4) If an oral hearing is requested, the independent reviewer may make procedural rulings.

(5) There shall be no discovery in independent dispute resolution proceedings conducted pursuant to this Subpart.

(6) The independent reviewer shall issue a written decision within ten days of submission or hearing.

F. Unless otherwise agreed by the parties, each party shall do all of the following:

(1) Bear the party's own attorney fees and costs.

(2) Equally bear all fees and costs of the independent reviewer.

G. The decision of the independent reviewer shall be final and binding on the parties. The prevailing party may seek enforcement of the independent reviewer's decision in any court of competent jurisdiction.

Section 2. The provisions of this Act shall apply to all new policies, plans, certificates, and contracts issued on or after January 1, 2019. Existing policies, plans,

certificates, and contracts shall include the coverage required by this Act on renewal thereof, but in no case later than January 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 439 Original 2018 Regular Session Talbot

Abstract: Prohibits balance billing for out-of-network air ambulance services and establishes an independent dispute resolution process for reimbursement claims.

Proposed law establishes legislative findings and the purpose and scope of proposed law.

Proposed law defines "balance billing", "covered person", "disputed air ambulance service provider charge", "health benefit plan", and "registered air ambulance service provider".

Proposed law prohibits a health benefit plan that does not have an adequate network of air ambulance service providers in this state from using an allowed amount for air ambulance reimbursement that is less than the applicable average rates published by registered air ambulance service providers.

Proposed law requires a health benefit plan, if a covered person receives services from a registered air ambulance service provider that is not part of the health benefit plan's network, to assume the covered person's responsibility for amounts charged by the registered air ambulance service provider other than any applicable copayments, coinsurance, and deductibles.

Proposed law prohibits, with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the registered air ambulance service from doing any of the following in connection with the amount assumed by the health benefit plan:

(1) Bill, collect, or attempt to collect from the covered person..

(2) Report to a consumer reporting agency that the covered person is delinquent.

(3) Obtain a lien on the covered person's property..

(4) Take any other action adverse to the covered person.

Proposed law requires the health benefit plan to make payment based on any of the following:

(1) The billed charges of the registered air ambulance service.

(2) Another amount negotiated with the registered air ambulance service.

(3) The maximum amount the health benefit plan would pay to an in-network air ambulance service provider for the services performed, unless the plan fails to have an adequate network of air ambulance providers, in which case the average amount as determined by the Dept. of Insurance (DOI).

Proposed law authorizes a health benefit plan or registered air ambulance service provider who disputes the reasonableness of a payment to invoke the independent dispute resolution

process established pursuant to proposed law, if good-faith settlement negotiations fail to resolve the dispute.

Proposed law requires DOI to establish and administer a program of independent dispute resolution for disputed air ambulance service charges. Proposed law authorizes DOI to charge any fees necessary to cover the costs of implementation and administration.

Proposed law requires DOI to maintain a list of qualified reviewers.

Proposed law requires an air ambulance service provider wishing to participate in the independent dispute resolution program to register with DOI. Proposed law provides that registration shall automatically renew quarterly unless the registered air ambulance service provider gives notice of the intent to not renew the registration not less than 30 days prior to the end of the quarter.

Proposed law provides that all disputed charges incurred during the quarter of a registered air ambulance service provider's registration shall be subject to independent dispute resolution.

Proposed law requires a registered air ambulance provider to publish the air ambulance transport rates charged by the air ambulance provider in this state and to provide de-identified, itemized billings for each of the air ambulance provider's transports in this state.

Proposed law requires DOI to keep and maintain records of each independent dispute resolution proceeding and to analyze the results of the independent dispute resolution proceedings. Proposed law further requires DOI to publish on its website an annual report concerning statistics of the program.

Proposed law limits the sole issue to be considered and determined in an independent dispute resolution proceeding to the reasonable charge for the air ambulance service provided based upon the overall fixed and variable cost for providing the air ambulance services.

Proposed law permits either the registered air ambulance service provider or the health benefit plan to request adjudication of a disputed charge by submitting a request for independent dispute resolution to DOI.

Proposed law requires DOI, if the parties have not designated an independent reviewer by mutual agreement within 30 days of the request for independent dispute resolution, to select an independent reviewer from the department's list of qualified reviewers.

Proposed law requires an individual acting as an independent reviewer to be knowledgeable and experienced in applicable principles of contract and insurance law and the healthcare industry generally and prohibits an individual with a conflict of interest that would adversely impact the individual's independence and impartiality.

Proposed law establishes the procedures for an independent dispute resolution proceeding.

Proposed law provides that the decision of the independent reviewer shall be final and binding on the parties and the prevailing party may seek enforcement of the independent reviewer's decision in any court of competent jurisdiction.

Proposed law applies to all new policies, plans, certificates, and contracts issued on or after Jan. 1, 2019. Existing policies, plans, certificates, and contracts shall include the coverage required by proposed law on renewal, but in no case later than Jan. 1, 2019.

(Adds R.S. 22:1885.1-1885.6)