SENATE . . . . . No. 2150

Senate, May 25, 2017 -- Text of amendment (527) (offered by Senator James T. Welch) to the Ways and Means amendment (Senate, No. 3) to the House Bill making appropriations for the fiscal year 2018 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

by inserting after section XX the following new sections:- "SECTION A. Chapter 6D of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 16, the following section:-

"Section 16A. (a) The non-contracted commercial rate for emergency services and the non-contracted commercial rate for non-emergency services shall be effective for a 5 year period. The commission shall, upon consideration of advice and any other pertinent evidence, set the non-contracted commercial rate for emergency services and the non-contracted commercial rate for non-emergency services so that: (i) each rate shall result in meaningful cost savings to patients; (ii) each rate, in operation, shall encourage in-network participation by health care providers; and (iii) each rate, in operation, shall be understandable and easily administrable by health care providers and carriers.

(b) The commission shall thereafter conduct a review of the established rates in the fourth year of their operation, and make changes to those rates consistent with subsection (a) to be effective for the next five year period."

SECTION B. Chapter 111 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out section 228 and inserting in place thereof the following section:-

"(a) Prior to an admission, procedure or service a health care provider shall, disclose upon the request of a patient or prospective patient, within 2 working days, the allowed amount or charge of the admission, procedure or service, including the amount for any facility fees required; provided, however, that if a health care provider is unable to quote a specific amount in advance due to the health care provider's inability to predict the specific treatment or diagnostic code, the health care provider shall disclose the estimated maximum allowed amount or charge for a proposed admission, procedure or service, including the amount for any facility fees required. Such disclosure shall be deemed satisfied by a health care provider if the patient or prospective patient is given a notice of network status effect pursuant to sections 28 and 29 of chapter 176O.

(b) If a patient or prospective patient is covered by a health plan, a health care provider who participates as a network provider shall, provide to a prospective patient, based on the information available to the provider at the time of the request, sufficient information regarding the proposed admission, procedure or service for the patient or prospective patient to make an informed decision about the costs associated with that admission, procedure or service. Such disclosure shall be deemed satisfied by a health care provider if the patient or prospective patient is given a notice of network status effect pursuant to sections 28 and 29 of chapter 176O. A health care provider may assist a patient or prospective patient in using the health plan's toll-free number and website pursuant to section 23 of chapter 176O.

(c) A health care provider referring a patient to another provider shall disclose: (1) if it is part of or represented by the same provider organization as defined in section 11 of chapter 6D; and (2) the network status of that other provider consistent with section 28 and 29 of chapter 176O.

As used in this section, "allowed amount", shall mean the contractually agreed upon amount paid by a carrier to a health care provider for health care services provided to an insured."

SECTION C. Section 1 of chapter 176O of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting before the definition of "Adverse Determination" the following definition:-

"Acknowledgment of network status effect", written consent by an insured attesting to the receipt of a notice of network status effect submitted to a health care provider prior to the receipt of the health care services included within the notice of network status effect."

SECTION D. Said section 1 of said chapter 176O of the General Laws, as so appearing , is hereby further amended by inserting before the definition of "Incentive plan" the following definition:-

"In-network contracted rate", the contracted rate paid by an insured's carrier for health care services delivered by a health care provider included in the carrier's network.

SECTION E. Said section 1 of said chapter 176O of the General Laws, as so appearing, is hereby further amended by inserting after the definition of "Licensed health care provider group" the following definition:-

"Medicare rate", the amount that Medicare would reimburse for delivered health care services.

SECTION F. Said section 1 of said chapter 176O of the General Laws, as so appearing, is hereby further amended by inserting after the definition of "Network" the following definitions:-

"Non-contracted commercial rate for emergency services", the amount set pursuant to section 16A of chapter 6D used to determine the rate of payment to a health care provider for the provision of emergency health care services to an insured and the health care provider is not in the carrier's network.

"Non-contracted commercial rate for non-emergency services", the amount set pursuant to section 16A of chapter 6D used to determine the rate of payment to a health care provider for non-emergency services and the health care provider is not in the carrier's network.

"Non-emergency Services", health care services rendered to an insured experiencing a condition other than an emergency medical condition.

"Notice of network status effect", a notice distributed to an insured prior to receiving non-emergency services from a health care provider within a reasonable period of time that permits the insured to seek health care services from an alternative provider based on the results of the notice.

SECTION G. Said section 23 of said chapter 176O, as so appearing, is hereby further amended by adding the following subsection:-

"(b) All carriers shall inform an insured or the insured's health care provider, as applicable, at the time the insured or the insured's health care provider request, pursuant to section 228 of chapter 111, a prospective or concurrent review in relation to a notice of network status effect: (1) the network status under such covered person's health benefit plan of the health care provider who will be providing the health care services; (2) the amount the health carrier will reimburse such health care provider for such health care services, consistent with section 28 of chapter 176O; and (3) the amount of any facility fee, copayment, deductible, coinsurance or other out of pocket amount for any covered health care benefits to be paid by the insured."

SECTION H. Said chapter 176O of the General Laws, as so appearing, is hereby further amended by inserting after section 27, the following sections:-

"Section 28. (a) A health care provider that has delivered health care services to an insured to treat an emergency medical condition, where that health care provider is a member of the insured's carrier's network but not a participating provider in the insured's health benefit plan, that health care provider shall only bill for the in-network contracted rate; provided that amounts billed shall be paid by the insured and the insured's carrier consistent with the terms of the insured's health benefit plan;

(b) A health care provider that delivered health care services to an insured but is not contracted to be a network provider with the insured's carrier shall be reimbursed for those services in an amount and manner to be determined as follows if the out of network health care provider:

(i) has obtained an acknowledgement of network status effect from the insured, the health care provider shall bill the insured directly for the health care services provided in the amounts indicated for those health care services in the notice of status effect;or

(ii) has not obtained an acknowledgement of network status effect from the insured, they shall only bill for any non-emergency service rendered the greater of: (i) the in-network contracted rate; (ii) the Medicare rate; or (iii) the non-contracted commercial rate for non-emergency services; provided that amounts billed shall be paid by the insured and the insured's carrier consistent with the terms of the insured's health benefit plan as if the health care provider were a participating provider under that plan; or

(iii) has not obtained an acknowledgement of network status effect from the insured and delivered health care services due to treat an emergency medical condition, the out of network health care provider shall only bill for any service the greater of: i) the in-network contracted rate; or ii) the non-contracted commercial rate for non-emergency services; provided that amounts billed shall be paid by the insured and the insured's carrier consistent with the terms of the insured's health benefit plan as if the health care provider were a participating provider under that plan.

(c) Nothing in this section shall require a carrier to pay for health care services delivered to an insured that are not covered benefits under the terms of the insured's health benefit plan.

Section 29. (a) A notice of network status effect shall include, but not be limited to, the following: (i) a description of the network status of all health care providers delivering health care services to the insured; (ii) an itemized estimate of payments due for anticipated health care services performed pursuant to the insured's health benefit plan for in network providers; (iii) an

itemized estimate of payments due for anticipated health care services performed by out of network providers; and (iv) any facility fee, copayment, deductible, coinsurance or other out of pocket amount for any covered health care benefits.

(b) An acknowledgement of notice of network status effect will be valid only if an insured, their parent, legal guardian, health care agent pursuant to chapter 201D, or caregiver pursuant to chapter 201F has indicated in writing that they have received, read, and understand the contents of such notice prior to the provision of health care services.

Section 30. (a) The Division shall promulgate regulations necessary to implement the provisions of sections 28 and 29 of this Chapter."

SECTION I. Notwithstanding any general or special law to the contrary, the non-contracted commercial rate for non-emergency services shall be equal to the eightieth percentile of all charges for a particular health care service performed by a health care provider in the same or similar specialty and provided in the same geographical area, as reported in a benchmarking database maintained by the Division of Insurance working in conjunction with the commission and the center.

SECTION J. Notwithstanding any general or special law to the contrary, the non-contracted commercial rate for emergency services shall be equal to the eightieth percentile of all charges for a particular health care service performed by a health care provider in the same or similar specialty and provided in the same geographical area, as reported in a benchmarking database maintained by the Division of Insurance working in conjunction with the commission and the center.

SECTION K. Notwithstanding any general or special law to the contrary, any facility that has obtained provider-based status from Medicare pursuant to the requirements of 42 C.F.R. §413.65 shall upon obtaining that designation notify members of their patient panel that: i) the facility is now considered to be a hospital out-patient department of the main hospital provider; and ii) the health care services delivered at the facility will also incur a facility fee due to that status. Such facility shall also post such notice in a conspicuous place in every room of that facility where a patient or prospective patient would have a meaningful opportunity to consider that information prior to receiving health care services from that facility.

SECTION L. Sections J and K shall take effect on July 1, 2018.

SECTION M. Sections J and K are hereby repealed.

SECTION N. Section M shall take effect on December 31, 2019.

SECTION O. Section A shall take effect on January 1, 2020.”.