

SENATE No. 674

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to out-of-network billing.

PETITION OF:

NAME:

Cindy F. Friedman

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 674

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 674) of Cindy F. Friedman for legislation relative to out-of-network billing. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to out-of-network billing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 12C of the General Laws is hereby amended by adding the
2 following section:-

3 Section 24. The center shall calculate the noncontracted commercial rate for emergency
4 services and the noncontracted commercial rate for nonemergency services established under
5 section 28 of chapter 176O. The center may contract with a nonprofit organization with expertise
6 in independent analysis of payment rates for health care services to assist the center in
7 calculating the noncontracted commercial rate for emergency services and the noncontracted
8 commercial rate for nonemergency services; provided, however, that such organization shall not
9 be affiliated with a health carrier or a health care provider.

10 SECTION 2. Section 1 of chapter 176O of the General Laws, as appearing in the 2018
11 Official Edition, is hereby amended by inserting after the definition of “Downside risk” the
12 following definition:-

“Emergency health care services”, health care services rendered to an insured experiencing an emergency medical condition.

SECTION 3. Said section 1 of said chapter 176O, as so appearing, is hereby further amended by inserting after the definition of “Incentive plan” the following definition:-

“In-network contracted rate”, the rate contracted between an insured's carrier and a network health care provider for the reimbursement of health care services delivered by that health care provider to the insured.

SECTION 4. Said section 1 of said chapter 176O, as so appearing, is hereby further amended by inserting after the definition of “Network” the following 3 definitions:-

“Noncontracted commercial rate for emergency services”, the amount set pursuant to section 28 of chapter 176O and used to determine the rate of payment to a health care provider for the provision of emergency health care services to an insured when the health care provider is not in the carrier’s network; provided, however, that “noncontracted commercial rate for emergency services” shall not include emergency health care services that are provided by a person or entity licensed by the department of public health pursuant to section 6 of chapter 111C to establish or maintain an ambulance service.

“Noncontracted commercial rate for nonemergency services”, the amount set pursuant to section 28 of chapter 176O and used to determine the rate of payment to a health care provider for the provision of nonemergency health care services to an insured when the health care provider is not in the carrier’s network.

“Nonemergency health care services”, health care services rendered to an insured experiencing a condition other than an emergency medical condition.

SECTION 5. Subsection (a) of section 6 of said chapter 176O, as so appearing, is hereby amended by striking out clause (8) and inserting in place thereof the following clause:-

(8) a summary description of the procedure, if any, for out-of-network referrals and any additional charge for utilizing out-of-network providers and a description of the out-of-network consumer protections, including the prohibition on certain billing practices under this chapter.

SECTION 6. Subsection (a) of section 27 of said chapter 176O, as so appearing, is hereby amended by adding the following sentence:-

The common summary of payments form shall include a description of the out-of-network consumer protections, including the prohibition on certain billing practices, under this chapter.

SECTION 7. Said chapter 176O is hereby further amended by adding the following sections:-

Section 28. (a) The division shall, in consultation with the health policy commission, the center for health information and analysis and the executive office of health and human services, establish and implement the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services. The noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services shall be in effect for a term of 5 years and shall apply to payments under clauses (ii) and (iv) of paragraph (1) of subsection (a) of section 29 of said chapter 176O.

(b) In establishing the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services, the division shall consider:

(i) existing contracted rates by public and private payers and the appropriateness of those rates for covering the cost of care;

(ii) the impact of each rate on: (A) patient access to health care services by geographic location; (B) the growth of total health care expenditures; (C) encouraging in-network participation by health care providers and incentivizing carriers to contract with health care providers; (D) financial stability of health care providers and systems; (E) insurance premiums; and (F) provider price variation;

(iii) utilization of the rates by self-insured health plans;

(iv) ease of transparency in calculating the rates and ease of administration by health care providers and carriers;

(v) the advisability of establishing a process for providers or payers to dispute the accuracy or appropriateness of a rate;

(vi) best practices in other states; and

(vii) any other factor that the division deems relevant.

In developing the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services, the division shall determine that the rates do not have a negative impact on the delivery of care by health care providers predominately serving communities that experience health disparities as a result of race, ethnicity, socioeconomic status or other status as determined by the division..

(c) Prior to establishing and implementing the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services, the division shall hold a public hearing. The hearing shall examine current rates paid for in-network and out-of-network services and the impact of those rates on the operation of the health care delivery system. and the hearing shall help the division determine, based on the provided testimony, information and data, an appropriate noncontracted commercial rate for emergency services and an appropriate noncontracted commercial rate for nonemergency services consistent with subsection (b). The division shall provide notice to the public, the health policy commission, the center for health information and analysis and the executive office of health and human services of the hearing not less than 45 days before the date of the hearing. The division shall identify as witnesses for the hearing a representative sample of providers, provider organizations, payers and other interested parties as the division may determine. Any interested party may testify at the hearing.

(d) Not later than 30 days after the division's hearing under subsection (c), the division shall publish on its website and implement a noncontracted commercial rate for emergency services and a noncontracted commercial rate for nonemergency services.. The noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services shall take effect immediately and shall be in effect for the applicable 5-year term.

(e) The division shall conduct a review of established rates in the fourth year of the rates' operation. The division shall hold a public hearing under subsection (c) in said fourth year and recommend rates consistent with this section to be effective for the next 5-year term.

(f) The noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services established under subsection (d) shall be calculated by the center for health information and analysis as provided in section 24 of chapter 12C.

Section 29. (a)(1) A carrier shall reimburse a health care provider as follows:

(i) where the health care provider is a member of an insured's carrier's network but not a participating provider in the insured's health benefit plan and the health care provider has delivered health care services to the insured to treat an emergency medical condition, the carrier shall pay that provider the in-network contracted rate for each delivered service; provided, however, that such payment shall constitute payment in full to that health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan;

(ii) where the health care provider is not a member of an insured's carrier's network and the health care provider has delivered health care services to the insured to treat an emergency medical condition, the carrier shall pay that provider the noncontracted commercial rate for emergency services for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan;

(iii) where the health care provider is a member of an insured's carrier's network but not a participating provider in the insured's health benefit plan and the health care provider has

delivered nonemergency health care services to the insured and a participating provider in the insured's health benefit plan is unavailable or the health care provider renders those nonemergency health care services without proper notice to the insured as described in section 228 of chapter 111, the carrier shall pay that provider the in-network contracted rate for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service from a participating health care provider under the terms of the insured's health benefit plan; and

(iv) where the health care provider is not a member of an insured's carrier's network and the health care provider has delivered nonemergency services to the insured and a participating provider in the insured's health benefit plan is unavailable or the health care provider renders those nonemergency health care services without proper notice to the insured as described in section 228 of chapter 111, the carrier shall pay the provider the noncontracted commercial rate for nonemergency services for each delivered service; provided, however, that such payment shall constitute payment in full to the health care provider and the provider shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured received such service or services from a participating health care provider under the terms of the insured's health benefit plan.

(2) It shall be an unfair and deceptive act or practice in violation of section 2 of chapter 93A for any health care provider or carrier to request payment from an enrollee, other than the applicable coinsurance, copayment, deductible or other out-of-pocket expense, for the services described in paragraph (1).

(b) 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.

(c) Nothing in this section shall require a carrier to pay for nonemergency health care services delivered to an insured if the insured had a reasonable opportunity to choose to have the service performed by a network provider participating in the insured's health benefit plan.

Evidence that an insured had a reasonable opportunity to choose to have the service performed by a network provider may include, but not be limited to, a written acknowledgement submitted with any claim for reimbursement from the carrier that: (i) is signed by the insured; and (ii) was provided by the health care provider to the insured before the delivery of nonemergency health care services and provided the insured a reasonable amount of time to seek health care services from a participating provider in the insured's health benefit plan.

(d) With respect to an entity providing or administering a self-funded health benefit plan governed by the provisions of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. and its plan members, this section shall only apply if the plan elects to be subject to the provisions of this section. To elect to be subject to the provisions of this section, the self-funded health benefit plan shall provide notice to the division on an annual basis, in a form and manner prescribed by the division, attesting to the plan's participation and agreeing to be bound by the provisions of this section. The self-funded health benefit plan shall amend the health benefit plan, coverage policies, contracts and any other plan documents to reflect that the benefits of this section shall apply to the plan's members.

(e) In a form and manner to be prescribed by the division, carriers shall indicate to insureds that the plan is subject to these provisions. In the case of self-funded health benefit

plans that elect to be subject to this section pursuant to subsection (d), the plan shall indicate to its members that it is self-funded and has elected to be subject to these provisions.

(f) The commissioner shall promulgate regulations that are necessary to implement this section.

(g) The attorney general shall have the authority to conduct investigations of alleged violations of this section pursuant to section 5 of chapter 175H or section 6 of chapter 93A. The attorney general may enforce this section by bringing an action pursuant to section 4 or said section 5 of said chapter 175H or section 4 of said chapter 93A.

SECTION 8. Notwithstanding any general or special law to the contrary, the division of insurance shall establish and implement a noncontracted commercial rate for emergency services and a noncontracted commercial rate for nonemergency services under section 28 of chapter 176O of the General Laws not later than July 31, 2022; provided, that the noncontracted commercial rate for emergency services and the noncontracted commercial rate for nonemergency services established by the division shall be based on the report and recommendations of the secretary of health and human services under section 71 of Chapter 260 of the Acts of 2020.