

Update #1 on Insurance and Insurance-Related Bills from the 85th Texas Legislature

06/29/2017

The 2017 regular session of the Texas Legislature was characterized by clashes on social hot-button issues (sanctuary cities, school vouchers, transgender bathroom privileges) between the very conservative Senate, led by Lt. Governor Dan Patrick, and the slightly more moderate House of Representatives, led by Representative and Speaker of the House Joe Straus. The state's greatly outnumbered Democrats were once again consigned to supporting roles. Despite the rhetorical fireworks and occasional delays due to intra-party disputes, the Legislature did enact some significant legislation. Listed below are just a few of the more important insurance and insurance-related bills set to become law. Each will become effective as of September 1, 2017 unless otherwise noted.

SB 507: Out-of-Network Provider Mediation

This bill expands the scope of Texas's out-of-network provider mediation law. The mediation process, established in 2009, is designed to give insureds in preferred provider organizations ("PPOs") a remedy for the sort of unexpected balance billing that may occur when the insured is treated in an "in-network" facility by an "out-of-network" provider who does not adequately disclose his or her out-of-network status. While the charges made by an in-network facility are generally covered by an insurer at negotiated, and sometimes heavily discounted, rates, the charges of an out-of-network provider may only be partially covered—which can lead to a considerable shock when the insured receives the out-of-network provider's bill. Chapter 1467 of the Texas Insurance Code forces the provider, the insurer, and the insured to work out a compromise on the provider's bill, with the threat of a special litigation procedure that allows a judge to make such a decision if the parties do not. (Author's note: I have handled a number of these mediations. I can attest to the fact that while no one likes doing them, in my experience the procedures have, so far, always led to a negotiated settlement.) While the law currently covers out-of-network providers such as radiologists and anesthesiologists, SB 507 expands the system to include all types of out-of-network providers treating patients at in-network hospitals and other facilities. It also allows mediation for emergency care balance bills over \$500 at any healthcare facility, whether in or out of network. SB 507 goes into effect on September 1, 2017, but will only start to apply to services provided after January 1, 2018.

HB 3276: Free-Standing ERs

HB 3276 takes aim at so-called "free-standing" emergency medical care facilities (sometimes known as "freestanding ERs")—the facilities that seem to be popping up in well-to-do areas of Texas cities with

increasing frequency. While these facilities sometimes claim that they “accept” payments from all insurers, they may not actually be in any insurer’s network of health care providers—which means that their charges are likely to far exceed any coverage an insured may have. The Legislature heard numerous horror stories this year from Texans, both insured and uninsured, who were surprised to receive large medical bills from free-standing emergency rooms, or providers practicing in such facilities, for relatively minor procedures—treatments for cuts and scrapes, for example. The new law amends the Texas Health and Safety Code to require free-standing ERs to disclose more clearly whether they are members of an insurer or insurers’ networks or, by contrast, are NOT in fact a member of any such network.

HB 1774 (The Anti-“Storm Chaser” Bill)

Intended to cut down on the number and costs of homeowners’ insurance-related lawsuits over the past several years, HB 1774 limits the dollar amounts available to insureds who sue their insurance companies for certain types of loss and allows insurers to get a clearer picture of the damages claimed by insureds and their attorneys before such litigation goes to trial. The new law, most of which will be codified in new Chapter 542A of the Texas Insurance Code, is especially restrictive regarding attorney’s fees; which will be subject to a complicated formula intended to limit the amounts so-called “storm chaser” plaintiff’s attorneys can realize from a successful lawsuit. HB 1774 has the following main features: (1) reduction of “prompt pay” interest penalties against insurance companies; (2) establishment of pre-lawsuit requirements for giving notice to insurers and allowing insurers to inspect the damaged property; (3) a provision that allows insurers to take responsibility for the actions of their agents and adjusters, thereby excusing such individuals from litigation filed by an insured; and (4) a new method for establishing the amount of attorney’s fees that can be awarded to an insured’s lawyers. While the new law has been referred to as a “hail claims” statute, its scope is broader. In fact, it applies to all damages under homeowners’ policies caused by “forces of nature,” including earthquake, wildfire, flood, tornado, lightning and hail.

HB 62: No Texting While Driving

While this is not an insurance bill per se, it may well affect Texas auto insurers’ overall liabilities and figure into ratemaking, and was widely supported by the industry. After several failed attempts in past sessions, the Legislature finally passed, and Governor Abbott signed, an “anti-texting” bill that makes it illegal for the operator of a motor vehicle to text while driving, subject to certain exceptions. The penalty for an infraction of the law is fairly light—a fine of up to \$100 for first-time offenders—unless the texting is found to have caused a death or serious bodily injury, in which case it can be punished as a Class A misdemeanor, involving a fine of up to \$4,000 and the possibility of up to one year in jail. Furthermore, there are a number of exceptions to the bill’s prohibition against use of wireless communication devices—using your phone as a control for listening to music, for example, is still permissible—which may make the law difficult to enforce.

HB 3218: HMO Network Pharmacy Contracting

For years, Texas health maintenance organizations (“HMOs”), including Medicaid Managed Care Organizations, or “MCOs,” have contracted with pharmacy benefit managers (“PBMs”) to provide access to the PBMs’ networks of pharmacies, rather than entering into contracts with such pharmacies directly. Recently, the Texas Department of Insurance raised questions about such arrangements, citing a restrictive reading of current law. HB 3218 amends Section 843.101 of the Insurance Code to ratify existing practices, making clear that HMOs can continue to contract with PBMs rather than directly with the networks or constituent pharmacies.

This is by no means a list of all the insurance and insurance-related bills passed by the 85th Texas Legislature. Stay tuned for additional updates by subscribing to our "Between the Lines" insurance blog.

