SPONSOR: Rep. Bentz & Rep. Dorsey Walker & Rep. Seigfried &
Rep. Smyk & Sen. McBride & Sen. Poore &
Sen. Townsend & Sen. Brown
Reps. Baumbach, Briggs King, Bush, Carson,
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Osienski, Spiegelman, K. Williams; Sens. Ennis, Hansen,
Lockman, Paradee, Pettyjohn, Sokola

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 286

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 18 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 3349 Emergency care and inadvertent out-of-network services.

(a) This section applies to every policy or contract of health insurance, including each policy or contract issued by a health service corporation, which is delivered or issued for delivery in this State, and which designates network physicians or providers or preferred physicians or providers (hereinafter referred to collectively as "network providers"). However, this section applies only to conditions for which coverage is provided by those policies or contracts.

(b) All individual and group health insurance policies shall provide that persons covered under those policies will be insured for emergency care and inadvertent out-of-network services performed by non-network providers at an agreed-upon or negotiated rate, regardless of whether the physician or provider furnishing the services has a contractual or other arrangement with the insurer to provide items or services to persons covered under the policies. In the event that the provider of emergency care or inadvertent out-of-network services and the insurer cannot agree upon the appropriate rate, the provider shall be entitled to those charges and rates allowed by the Insurance Commissioner or the Commissioner's designee following an arbitration of the dispute. The Insurance Commissioner shall adopt regulations concerning the arbitration of such disputes. In such circumstances, the non-network provider may not balance bill the insured.

(c) Prior to a determination by the Insurance Commissioner (or the Commissioner's designee) of those charges and rates allowed by the providers of emergency care or inadvertent out-of-network services pursuant to subsection (b) of this section, the insurer will pay directly to the non-network ~~emergency care~~ provider the highest allowable charge for each emergency care or inadvertent out-of-network service allowed by the insurer for any other network or non-network ~~emergency care~~ provider during the full 12-month period immediately prior to the date of each emergency care or

inadvertent out-of-network service performed by the non-network provider. The Insurance Commissioner is authorized to adopt regulations concerning the provisions of this subsection (c).

(d) Plans described in subsections (a) and (b) of this section shall cover:

(1) Any medical screening examination or other evaluation medically required to determine whether an emergency medical condition exists;

(2) Necessary emergency care services, including treatment and stabilization of an emergency medical condition; and

(3) Services originated in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition as approved by the insurer with respect to services performed by non-network providers, provided that the insurer is required to approve or disapprove coverage of post-stabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of services and the condition of the patient, but in no case to exceed 1 hour from the time of the request.

(4) Inadvertent out-of-network services.

~~(e) Nothing in this section shall prevent the operation of policy provisions involving deductibles or copayments. As used in this section "emergency medical condition" means a medical or behavioral condition the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including, but not limited to, severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:~~

(e) As used in this section:

(1) "Emergency medical condition" means a medical or behavioral condition the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including, but not limited to, severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in any of the following:

~~(1)~~ a. Placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition, placing the health of such person or others in serious ~~jeopardy;~~ jeopardy.

~~(2)~~ b. Serious impairment to such person's bodily ~~functions;~~ functions.

~~(3)~~ c. Serious impairment or dysfunction of any bodily organ or part of such ~~person; or~~ person.

~~(4)~~ d. Serious disfigurement of such person.

(2) "Inadvertent out-of-network services" means all of the following:

a. Health care services that are covered under a policy or contract of health insurance as set forth in subsection (a) but are provided by an out-of-network provider in an in-network facility or when in-network health care services are unavailable or not made available to the insured in the facility.

b. Laboratory testing ordered by an in-network provider and performed by an out-of-network laboratory.

(f) Nothing in this section shall prevent the operation of policy provisions involving deductibles or copayments. This section shall not apply to services provided by a volunteer fire department recognized as such by the State Fire Prevention Commission.

(g) The Insurance Commissioner shall establish a schedule of fees for arbitration. The non-prevailing party at arbitration shall reimburse the Commissioner for the expenses related to the arbitration process. Funds paid to the Insurance Commissioner under this subsection shall be placed in the arbitration fund and shall be used exclusively for the payment of appointed arbitrators. The Insurance Commissioner may, in the Commissioner's discretion, impose a schedule of maximum fees that can be charged by an arbitrator for a given type of arbitration.

Section 2. Amend Subchapter II, Chapter 33, Title 18 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows and re-numbering the paragraphs in §3371 accordingly:

§ 3371. Definitions.

(8) "Inadvertent out-of-network services" means those services identified in §§ 3349 and 3565 of this title.

§ 3374 Utilization review entity's obligations with respect to pre-authorization concerning emergency and inadvertent out-of-network health-care services.

A utilization review entity must follow all ~~emergency~~ procedures and mandates for emergency care and inadvertent out-of-network services as delineated in §§ 3349 and 3565 of this title.

Section 3. Amend Chapter 35, Title 18 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 3565 Emergency care and inadvertent out-of-network services.

(a) This section applies to every group or blanket policy or contract of health insurance, including each policy or contract issued by a health service corporation, which is delivered or issued for delivery in this State and which designates network physicians or providers or preferred physicians or providers (hereinafter referred to collectively as "network providers"). However, this section applies only to conditions for which coverage is provided by those policies or contracts.

(b) All individual and group health insurance policies shall provide that persons covered under those policies will be insured for emergency care and inadvertent out-of-network services performed by non-network providers at an agreed-upon or negotiated rate, regardless of whether the physician or provider furnishing the services has a contractual or other

arrangement with the insurer to provide items or services to persons covered under the policies. In the event that the provider of emergency care or inadvertent out-of-network services and the insurer cannot agree upon the appropriate rate, the provider shall be entitled to those charges and rates allowed by the Insurance Commissioner or the Commissioner's designee following an arbitration of the dispute. The Insurance Commissioner shall adopt regulations concerning the arbitration of such disputes. In such circumstances, the non-network provider may not balance bill the insured.

(c) Prior to a determination by the Insurance Commissioner's (or the Commissioner's designee) of those charges and rates allowed by the providers of emergency care or inadvertent out-of-network services pursuant to subsection (b) of this section, the insurer will pay directly to the non-network ~~emergency care~~ provider the highest allowable charge for each emergency care or inadvertent out-of-network service allowed by the insurer for any other network or non-network ~~emergency care~~ provider during the full 12-month period immediately prior to the date of each emergency care or inadvertent out-of-network service performed by the non-network provider. The Insurance Commissioner is authorized to adopt regulations concerning the provisions of this subsection (c).

(d) Plans described in subsections (a) and (b) of this section shall cover:

(1) Any medical screening examination or other evaluation medically required to determine whether an emergency medical condition exists;

(2) Necessary emergency care services, including treatment and stabilization of an emergency medical condition; and

(3) Services originated in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition as approved by the insurer with respect to services performed by non-network providers, provided that the insurer is required to approve or disapprove coverage of post-stabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of services and the condition of the patient, but in no case to exceed 1 hour from the time of the request.

(4) Inadvertent out-of-network services.

(e) ~~Nothing in this section shall prevent the operation of policy provisions involving deductibles or copayments.~~ As used in this section:

(1) "~~emergency~~ Emergency medical condition" means a medical or behavioral condition the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including, but not limited to, severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in any of the following:

~~(1)~~ a. Placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition, placing the health of such person or others in serious ~~jeopardy;~~ jeopardy.

~~(2)~~ b. Serious impairment to such person's bodily ~~functions;~~ functions.

~~(3)~~ c. Serious impairment or dysfunction of any bodily organ or part of such ~~person; or~~ person.

~~(4)~~ d. Serious disfigurement of such person.

(2) "Inadvertent out-of-network services" means all of the following:

a. Health care services that are covered under a policy or contract of health insurance as set forth in subsection (a) but are provided by an out-of-network provider in an in-network facility or when in-network health care services are unavailable or not made available to the insured in the facility.

b. Laboratory testing ordered by an in-network provider and performed by an out-of-network laboratory.

(f) Nothing in this section shall prevent the operation of policy provisions involving deductibles or copayments. This section shall not apply to services provided by a volunteer fire department recognized as such by the State Fire Prevention Commission.

(g) The Insurance Commissioner shall establish a schedule of fees for arbitration. The non-prevailing party at arbitration shall reimburse the Commissioner for the expenses related to the arbitration process. Funds paid to the Insurance Commissioner under this subsection shall be placed in the arbitration fund and shall be used exclusively for the payment of appointed arbitrators. The Insurance Commissioner may, in the Commissioner's discretion, impose a schedule of maximum fees that can be charged by an arbitrator for a given type of arbitration.

Section 4. Amend Subchapter V, Chapter 35, Title 18 of the Delaware Code by making insertions as shown by underline and deletions as shown by strikethrough as follows and re-numbering the paragraphs in §3581 accordingly:

§ 3581. Definitions.

(8) "Inadvertent out-of-network services" means those services identified in §§ 3349 and 3565 of this title.

§ 3584 Utilization review entity's obligations with respect to pre-authorization concerning emergency and inadvertent out-of-network health-care services.

A utilization review entity must follow all ~~emergency~~ procedures and mandates for emergency care and inadvertent out-of-network services as delineated in §§ 3349 and 3565 of this title.

Section 5. The Insurance Commissioner shall promulgate regulations to implement the provisions of this Act and assure that health insurance carriers maintain adequate networks of primary care providers, specialists, and other ancillary health care resources to serve their insureds.

SYNOPSIS

This bill requires that inadvertent out-of-network services be included in individual and group health insurance policies as well as group and blank health insurance policies. This bill defines inadvertent out-of-network services are those services that are covered under a policy or contract of health insurances, but are provided by an out-of-network provider in an in-network facility, or when in-network health care services are unavailable or not made available to the insured in the facility. Inadvertent out-of-network services also includes laboratory testing ordered by an in-network provider but performed by an out-of-network laboratory.