

February 10, 2020

Via electronic submission to:
HHSRulesCoordinationOffice@hhsc.state.tx.us

COMMENT LETTER

HHSC Rules Coordination Office

Re: Draft Revisions to 26 TAC, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units,
Project No. 20R001

To whom it may concern:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association is pleased to submit the comments on the Texas Health and Human Services Commission's draft revisions to 26 TAC, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units. THA appreciates the HHSC's commitment to an open and transparent rulemaking process.

New Section 510.45(d)

With regard to the draft rules, THA notes that new language is being proposed to implement the provisions of Senate Bill 1264 from the 86th Texas Legislature. Specifically, THHSC proposes adding new subsection (d), which reads as follows:

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session (2019) and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901-21.4904 (relating to disclosures by out-of-network providers).

THA is concerned with the underlined language of subpart (2) because it improperly shifts notice requirements from non-facility providers to the facilities with which the providers contract.

Effective Jan. 1, 2020, SB 1264 prohibits out-of-network balance bills and creates a dispute resolution process for:

- Out of Network Emergency Care (facility's bill or provider's bill);
- Any health care, medical service or supply provided at an in-network facility by an out-of-network physician, health care practitioner, or other health care provider (the provider's bill); and
- Services provided by diagnostic imaging providers and laboratory service providers provided in connection with a health care service performed by a network physician or provider.

The prohibition on balance billing does not apply if a consumer elects to receive in writing in advance of a non-emergent service an explanation that the physician or provider does not have a contract with the enrollee's health benefit plan, the projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee would be responsible for those amounts. The only facility bill that SB 1264 applies to is a facility's bill for emergency care. The remainder of SB 1264 is limited to bills for professional services performed by out-of-network non-facility providers at or associated with in-network facilities.

On Jan. 1 of this year, TDI adopted emergency rules that included the form, notice period and disclosure requirements for elective out-of-network care. Now, in these draft rules, THHSC proposes to apply these requirements to private psychiatric facilities, which is well outside the scope of the SB 1264. THHSC proposes to improperly shift the requirement to provide notice to facilities rather than the non-facility providers, diagnostic imaging providers and laboratory service providers who independently bill patients and health insurance providers for services. THA understands THHSC's desire to include enforcement provisions in the Texas Administrative Code; however, those provisions should comport with SB 1264.

Accordingly, THA proposes the following change:

~~A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session (2019) and with related Texas Department of Insurance rule at 28 TAC Chapter 21, Subchapter 00, §§21.4901-21.4904 (relating to disclosures by out-of-network providers).~~

We appreciate your consideration of these comments. Should you have any questions or need additional information, please do not hesitate to contact me at 512/465-1000 or swohleb@tha.org.

Respectfully submitted,



Stephen G. Wohleb
Senior Vice President and General Counsel
Texas Hospital Association