

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:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68 (vi) best practices in other states; and

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

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

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

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

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

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

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

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

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

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

119 delivered nonemergency health care services to the insured and a participating provider in the
120 insured's health benefit plan is unavailable or the health care provider renders those
121 nonemergency health care services without proper notice to the insured as described in section
122 228 of chapter 111, the carrier shall pay that provider the in-network contracted rate for each
123 delivered service; provided, however, that such payment shall constitute payment in full to the
124 health care provider and the provider shall not bill the insured except for any applicable
125 copayment, coinsurance or deductible that would be owed if the insured received such service
126 from a participating health care provider under the terms of the insured's health benefit plan; and

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

137 (2) It shall be an unfair and deceptive act or practice in violation of section 2 of chapter
138 93A for any health care provider or carrier to request payment from an enrollee, other than the
139 applicable coinsurance, copayment, deductible or other out-of-pocket expense, for the services
140 described in paragraph (1).

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

143 (c) Nothing in this section shall require a carrier to pay for nonemergency health care
144 services delivered to an insured if the insured had a reasonable opportunity to choose to have the
145 service performed by a network provider participating in the insured's health benefit plan.
146 Evidence that an insured had a reasonable opportunity to choose to have the service performed
147 by a network provider may include, but not be limited to, a written acknowledgement submitted
148 with any claim for reimbursement from the carrier that: (i) is signed by the insured; and (ii) was
149 provided by the health care provider to the insured before the delivery of nonemergency health
150 care services and provided the insured a reasonable amount of time to seek health care services
151 from a participating provider in the insured's health benefit plan.

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

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

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

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

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

171 SECTION 8. Notwithstanding any general or special law to the contrary, the division of
172 insurance shall establish and implement a noncontracted commercial rate for emergency services
173 and a noncontracted commercial rate for nonemergency services under section 28 of chapter
174 176O of the General Laws not later than July 31, 2022; provided, that the noncontracted
175 commercial rate for emergency services and the noncontracted commercial rate for
176 nonemergency services established by the division shall be based on the report and
177 recommendations of the secretary of health and human services under section 71 of Chapter 260
178 of the Acts of 2020.