

SENATE BILL 2209

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 56
and Title 63, relative to providing cancer patients
with certain choices in treatment.

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

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, is amended by adding
the following new part 35:

56-7-3501. This part shall be known and may be cited as the "Cancer Patient Choice
Act."

56-7-3502. As used in this part:

(1) "Commercial insurance" includes:

(A) Any individual or group health insurance policy providing coverage on
an expense incurred basis;

(B) Any individual or group service contract issued by a hospital or
medical service corporation;

(C) Any individual or group service contract issued by a health
maintenance organization;

(D) Any self-insured group arrangement to the extent not preempted by
federal law, which is delivered, issued for delivery, or renewed in this state on or
after the date of enactment of this bill; and

(E) Any existing health insurance policy, health plan, group arrangement,
or contract;

(2) "CPT Code" means the unique numerical designations established by the American Medical Association for various medical, surgical, and diagnostic services used in billing healthcare services;

(3) "Eligible patients" means those patients who are eligible to participate in any hypofractionated proton therapy protocol and who would otherwise receive IMRT treatment;

(4) "Fee schedule" means the dollar amount paid for a particular medical or diagnostic service as identified by CPT Code;

(5) "Hypofractionated proton therapy protocol" means one (1) of the cancer treatment protocols described in this part that involves the delivery of fewer, larger doses of radiation with proton therapy to achieve the same curative effect as conventional radiation therapy delivered in smaller doses over an extended period of time;

(6) "Intensity Modulated Radiation Therapy" or "IMRT" means a type of conformal radiotherapy that delivers photon or x-ray radiation beams of different intensities from many angles to closely approximate the shape of the tumor;

(7) "Payer" includes the bureau of TennCare and any commercial insurer or health maintenance organization required to remit payment for healthcare services provided to one (1) of their insureds pursuant to a health insurance policy, health plan, group arrangement, or contract;

(8) "Physician" means a physician licensed under title 63, chapter 6 or 9;

(9) "Proton therapy" means the advanced form of cancer treatment that utilizes charged particles to induce tumor cell death;

(10) "Provider" includes any healthcare provider that provides proton therapy treatment to eligible patients under any hypofractionated protocol;

(11) "Radiation therapy" includes proton therapy, intensity modulated radiation therapy, brachytherapy, stereotactic body radiation therapy, and three-dimensional (3D) conformal radiation therapy;

(12) "Standard IMRT Protocol" means, for breast cancer, thirty-three (33) IMRT treatments, and for prostate cancer, forty (40) IMRT treatments;

(13) "State" means this state; and

(14) "TennCare" means the state of Tennessee's Medicaid program operated by the bureau of TennCare.

56-7-3503.

(a) In order to afford an eligible patient the right to choose the form of radiation therapy that the patient's physician determines will result in the best clinical outcome and to further research and facilitate the accumulation of proton treatment data without increasing costs above current IMRT costs, all physician-prescribed proton therapy for the treatment of breast or prostate cancer under a hypofractionated protocol as part of a clinical trial or registry shall be covered by both the patient's commercial insurance as an in-network service and by TennCare.

(b) The hypofractionated proton therapy protocol for breast cancer shall include twenty (20) treatments as compared to thirty-three (33) treatments under the standard IMRT protocol.

(c) The hypofractionated proton therapy protocol for prostate cancer shall include twenty (20) treatments as compared to forty (40) treatments under the standard IMRT protocol.

(d) Additional hypofractionated protocols for prostate cancer, breast cancer, and other indications shall be covered pursuant to this part if such protocols are part of a clinical trial or registry and the total cost of treatment pursuant to the protocol is less than or equal to the total cost of the corresponding IMRT treatment for the same indication.

(e) To eliminate any additional costs to the state and payers, the amount payable for the proton treatment delivery for the indications in subsections (b), (c), and

(d) shall be fixed at the following amounts so that the total cost of treatment under the hypofractionated proton therapy protocol will be equal to or less than the total cost of treatment for the corresponding standard IMRT protocol for the same indication:

(1) For treatments under subsection (b), commercial insurers shall pay a fixed rate of one hundred forty-five and two-tenths percent (145.2%) of the fee schedule established for CPT Code 77523 in the current (2015) Tennessee Medicare Physician Fee Schedule as published by Cahaba Government Benefits Administrators, LLC ("Cahaba fee schedule"), and TennCare shall pay a fixed rate of sixty and four-tenths percent (60.4%) of the fee schedule established in the Cahaba fee schedule;

(2) For treatments under subsection (c), commercial insurers shall pay a fixed rate of one hundred seventy-seven and nine-tenths percent (177.9%) of the fee schedule established for CPT Code 77523 in the Cahaba fee schedule, and TennCare shall pay a fixed rate of seventy-four percent (74%) of the fee schedule established in the Cahaba fee schedule;

(3) For treatments under subsection (d), commercial insurers shall pay a fixed percentage of the fee schedule established for CPT Code 77523 in the Cahaba fee schedule, and TennCare shall pay a corresponding fixed percentage such that the total cost of patient treatment under any of the additional hypofractionated proton therapy protocols shall be equal to the total cost of treatment under the standard IMRT protocol for that indication; and

(4) For all other CPT codes applicable to both proton therapy and IMRT, commercial insurers shall pay the amount established by the Healthcare Bluebook at healthcarebluebook.com as a "fair price" for such CPT Code in this

state, and if the particular CPT Code is not listed on such web site, one hundred ninety percent (190%) of the Cahaba fee schedule for such CPT Code.

(f) If the application of the percentages set forth in subsection (e) would result in a total cost of hypofractionated proton therapy treatment that exceeds the total cost of IMRT treatment for insureds under the state group insurance program, such percentages shall be adjusted for the state group insurance program so that the cost of a course of hypofractionated proton therapy treatment is equal to the state group insurance program's weighted average cost for a standard course of IMRT treatment. In order to obtain an adjustment pursuant to this subsection, the state group insurance program shall submit a written request to the provider advising the provider of the state group insurance program's aggregate cost of a standard course of IMRT treatment for the indication at issue. The provider shall adjust the percentages immediately upon receipt of the written request from the state group insurance program.

(g) If the application of the percentages set forth in subsection (e) would result in a total cost of hypofractionated proton therapy treatment that exceeds the cost of IMRT treatment for participants in TennCare, such percentages shall be adjusted for TennCare so that the total cost of a course of hypofractionated proton therapy treatment is equal to TennCare's weighted average total cost for a standard course of IMRT treatment. In order to obtain an adjustment pursuant to this subsection, the bureau of TennCare shall submit a written request to the provider advising the provider of the aggregate cost of a standard course of IMRT treatment for the indication at issue. The provider shall adjust the percentages immediately upon receipt of the written request from the bureau of TennCare.

(h) If the application of the percentages set forth in subsection (e) would result in a total hypofractionated proton therapy treatment cost that exceeds a payer's, other than

the state group insurance program and TennCare, weighted average total cost for a standard course of IMRT treatment based on the payer's payment data for the six-month period from July 1 through December 31, 2014, such percentages shall be adjusted for that payer so that the total cost of a course of hypofractionated proton therapy treatment is equal to the weighted average total cost for a standard course of IMRT treatment. If a payer seeks an adjustment of the percentages set forth in subsection (e) pursuant to this subsection, the payer shall submit data to the provider in acceptable form justifying such adjustment. A review of the data and adjustment of the percentage where appropriate shall be completed within thirty (30) days of the submission of the data.

(i) Adjustments to the percentages set forth in subsection (e) may be made annually on March 1 based on the payer's weighted average total cost for a standard course of IMRT treatment during the preceding calendar year. If a payer seeks an annual adjustment of the percentages set forth in subsection (e) pursuant to this section, the payer shall submit data in acceptable form justifying such adjustment to the provider on or before February 1 of the year in which the adjustment is sought. A review of the data and adjustment of the percentages where appropriate shall be completed on or before March 1 and shall be fixed until the subsequent adjustment date.

(j) The benefits required by this part shall be subject to the annual deductible and coinsurance established for all other similar benefits within the policy or contract of insurance; provided, the annual deductible and coinsurance for the benefits required by this section shall be no greater than the annual deductible and coinsurance established for all other similar benefits within that policy or contract of insurance.

(k) Because the payers, including the state group insurance program and TennCare, shall not be required to pay any more for a course of hypofractionated proton therapy than their present, weighted average payment for a course of IMRT treatment, in

no case shall the costs for proton therapy treatment as described in this section increase the costs to the state, the state group insurance program, TennCare, commercial insurance programs, or eligible patients.

(l) This part shall only apply to eligible patients who receive treatment pursuant to the hypofractionated proton therapy protocols in accordance with this section.

(m) This part shall not apply to insurance coverage providing benefits for the following:

- (1) Hospital confinement indemnity;
- (2) Disability income;
- (3) Accident-only;
- (4) Long-term care;
- (5) Limited benefit health;
- (6) Specific disease indemnity;
- (7) Sickness or bodily injury or death by accident; or
- (8) Other limited benefit policies.

SECTION 2. Unless specifically extended or amended, this act shall expire on June 30, 2019.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.