THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

S.B. NO. 2668
S.D. 2

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that consumers with
2 health insurance who receive treatment from an out-of-network
3 provider may receive a bill for the difference between an
4 insurer's payments to a health care provider and the out-of-
5 network provider's charges. These bills, known as balance bills
6 or surprise bills, occur most often when consumers receive
7 medical services from out-of-network providers. Out-of-network
8 providers may not have a contracted rate with an insurer for
9 services and therefore, the prices these providers may charge
10 may be much greater than the price charged by in-network
11 providers for similar services.

12 The legislature further finds that balance bills can be an
13 unwelcome surprise to consumers who may not have knowingly
14 decided to obtain health care outside of their provider network.
15 Currently, there is no broad protection from surprise bills or
16 balance bills at the federal level or in most states. In
17 Hawaii, the restriction on balance billing applies to health
18 maintenance organizations and mutual benefit societies only,

1 which must include a provision in provider contracts that states
2 a subscriber or member will not be liable to the provider for
3 amounts owed by the organization or society. The legislature
4 also finds that additional consumer protections are necessary to
5 increase transparency for patients billed for medical services
6 and protect consumers from the need to pay balance bills.
7 Accordingly, the purpose of this Act is to specify:
8 (1) Disclosure requirements for health care providers,
9 health care facilities, and hospitals who are
10 nonparticipating providers in a patient's health care
11 plan;
12 (2) The amount a nonparticipating provider may bill for
13 services performed without prior or subsequent
14 authorization from a patient's health care plan;
15 (3) That an insured shall not be liable to a health care
16 provider for any sums owed by an insurer; and
17 (4) That an insured who receives emergency services from a
18 nonparticipating provider shall not incur greater out-
19 of-pocket costs for the emergency services than the
20 insured would have incurred with a participating
21 provider.

1 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:
4 "**§321-A Disclosure required.** (a) A health care provider,
5 health care facility, or hospital shall disclose the following
6 information in writing to patients or prospective patients prior
7 to the provision of nonemergency services that are not
8 authorized by the patients' health care plan:
9 (1) That certain health care facility-based providers may
10 be called upon to render care to a covered person
11 during the course of treatment;
12 (2) That those health care facility-based providers may
13 not have contracts with the covered person's health
14 care plan and are therefore considered to be out-of-
15 network providers;
16 (3) That the services will therefore be provided on an
17 out-of-network basis and the cost may be substantially
18 higher than if the services were provided in-network;
19 (4) A notification that the covered person may either
20 agree to accept and pay the charges for the out-of-
21 network services, contact the covered person's health

1 care plan for additional assistance, or rely on any
2 other rights and remedies that may be available under
3 state or federal law; and
4 (5) A statement indicating that the covered person may
5 obtain a list of health care facility-based providers
6 from the covered person's health care plan that are
7 participating providers and the covered person may
8 request those participating facility-based providers.
9 (b) If a health care provider, health care facility, or
10 hospital is not a participating provider in a patient's or
11 prospective patient's health care plan network, the health care
12 provider, health care facility, or hospital shall:
13 (1) Inform a patient or prospective patient of the amount
14 or estimated amount the health care provider, health
15 care facility, or hospital will bill the patient or
16 prospective patient for health care services prior to
17 the provision of non-emergency services; and
18 (2) Disclose to the patient or prospective patient in
19 writing the amount or estimated amount that the health
20 care provider, health care facility, or hospital will
21 bill the patient or prospective patient for health

1 care services provided or anticipated to be provided
2 to the patient or prospective patient, not including
3 unforeseen medical circumstances that may arise when
4 the health care services are provided.
5 (c) For purposes of this section:
6 "Health care facility" means any institution, place,
7 building, or agency, or portion thereof, licensed or otherwise
8 authorized by the State, whether organized for profit or not,
9 used, operated, or designed to provide medical diagnosis,
10 treatment, or rehabilitative or preventive care to any person or
11 persons.
12 "Health care plan" means a health insurance company, mutual
13 benefit society governed by article 1 of chapter 432, health
14 care service plan or health maintenance organization governed by
15 chapter 432D, or any other entity delivering or issuing for
16 delivery in the State accident and health or sickness insurance
17 as defined in section 431:1-205, other than disability insurance
18 that replaces lost income.
19 "Health care provider" means an individual who is licensed
20 or otherwise authorized by the State to provide health care
21 services.

1 "Hospital" means:
2 (1) An institution with an organized medical staff,
3 regulated under section 321-11(10), that admits
4 patients for inpatient care, diagnosis, observation,
5 and treatment; and
6 (2) A health facility under chapter 323F.
7 **§321-B Health care provider responsibility.** (a) A health
8 care provider, health care facility, or hospital who is a
9 nonparticipating provider with a patient's health care plan
10 shall bill no more than one hundred twenty per cent of the
11 amount medicare would pay for the service to the patient's
12 health care plan if the services were performed without the
13 prior or subsequent authorization of the patient's health care
14 plan.
15 (b) For purposes of this section:
16 "Health care facility" shall have the same meaning as in
17 section 321-A.
18 "Health care plan" shall have the same meaning as in
19 section 321-A.
20 "Health care provider" shall have the same meaning as in
21 section 321-A.

1 "Hospital" shall have the same meaning as in section 321-
2 A."
3 SECTION 3. Chapter 431, Hawaii Revised Statutes, is
4 amended by adding a new section to article 10A to be
5 appropriately designated and to read as follows:
6 "**§431:10A- Balance billing; hold harmless; emergency**
7 **services.** (a) Every contract between an insurer and a
8 participating provider of health care services shall be in
9 writing and shall set forth that in the event the insurer fails
10 to pay for health care services as set forth in the contract,
11 the insured shall not be liable to the provider for any sums
12 owed by the insurer.
13 (b) When an insured receives emergency services from a
14 provider that is not a participating provider in the provider
15 network of an insurer, the insured shall not incur greater out-
16 of-pocket costs for the emergency services than the insured
17 would have incurred with a participating provider of health care
18 services.
19 (c) If a contract with a participating provider has not
20 been reduced to writing as required by this section, or if a
21 contract fails to contain the required prohibition, the

participating provider shall not collect or attempt to collect from the insured sums owed by the insurer. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against an insured to collect sums owed by the insurer.

(d) When an insured receives emergency services from a provider that is not a participating provider in the provider network of the insured, the insurer shall make certain that the insured shall incur no greater out-of-pocket costs for emergency services than the insured would have incurred with a participating provider of health care services.

(e) For purposes of this section:

"Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the person afflicted with the condition in serious jeopardy;

(2) Serious impairment to the person's bodily functions;

1 (3) Serious dysfunction of any bodily organ or part of the
2 person; or
3 (4) Serious disfigurement of the person.
4 "Emergency services" means, with respect to an emergency
5 condition:
6 (1) A medical screening examination as required under
7 section 1867 of the Social Security Act, 42 United
8 States Code section 1395dd; and
9 (2) Any further medical examination and treatment, as
10 required under section 1867 of the Social Security
11 Act, title 42 United States Code section 1395dd, to
12 stabilize the patient."
13 SECTION 4. Section 432:1-407, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:
15 "(d) Every contract between a mutual benefit society and a
16 participating provider of health care services shall be in
17 writing and shall set forth that in the event the society fails
18 to pay for health care services as set forth in the contract,
19 the subscriber or member shall not be liable to the provider for
20 any sums owed by the society. When a subscriber or member
21 receives emergency services from a provider that is not a

participating provider in the provider network of the mutual benefit society, the mutual benefit society shall ensure that the subscriber or member shall incur no greater out-of-pocket costs for emergency services than the subscriber or member would have incurred with a participating provider of health care services. If a contract with a participating provider has not been reduced to writing as required by this subsection, or if a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or member sums owed by the society. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or member to collect sums owed by the society.

For purposes of this subsection, "emergency services" shall have the same meaning as in section 431:10A-   ."

SECTION 5. Section 432D-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for

1 health care services as set forth in the contract, the
2 subscriber or enrollee shall not be liable to the provider for
3 any sums owed by the health maintenance organization. When a
4 subscriber or enrollee receives emergency services from a
5 provider that is not a participating provider in the provider
6 network of the health maintenance organization, the health
7 maintenance organization shall ensure that the subscriber or
8 enrollee shall incur no greater out-of-pocket costs for
9 emergency services than the subscriber or enrollee would have
10 incurred with a participating provider of health care services.
11 In the event that a contract with a participating provider has
12 not been reduced to writing as required by this subsection or
13 that a contract fails to contain the required prohibition, the
14 participating provider shall not collect or attempt to collect
15 from the subscriber or enrollee sums owed by the health
16 maintenance organization. No participating provider, or agent,
17 trustee, or assignee thereof, may maintain any action at law
18 against a subscriber or enrollee to collect sums owed by the
19 health maintenance organization.
20 For purposes of this subsection, "emergency services" shall
21 have the same meaning as in section 431:10A- ."

1 SECTION 6. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.
5 SECTION 7. New statutory material is underscored.
6 SECTION 8. This Act shall take effect on July 1, 2050.

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Report Title:
Insurance; Out-of-Network Providers; Balance Bills; Surprise Bills; Disclosure; Hold Harmless; Emergency Services; Health Care Providers; Health Care Facilities; Hospitals

Description:
Specifies disclosure requirements for health care providers, health care facilities, and hospitals who are nonparticipating providers in a patient's health care plan. Specifies the amount a nonparticipating provider may bill for services performed without prior or subsequent authorization from a patient's health care plan. Specifies an insured shall not be liable to a health care provider for any sums owed by an insurer. Specifies that an insured who receives emergency services from a nonparticipating provider shall not incur greater out-of-pocket costs for the emergency services than the insured would have incurred with a participating provider. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.