

STAND. COM. REP. NO. **2943**

Honolulu, Hawaii

FEB 27 2020

RE: S.B. No. 2423
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2423 entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL SERVICE BILLING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers; and
- (2) Specify the circumstances in which health care providers and facilities can bill health carriers and enrollees for health intervention services that are medical necessities.

Your Committee received testimony in support of this measure from the Department of Commerce and Consumer Affairs, Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees, Hawaii Medical Assurance Association, The Queen's Health Systems, and the Hawaii Medical Service Association. Your Committee received testimony in opposition to this measure from the Hawaii Medical Association and the Hawaii Chapter of the American College of Emergency Physicians. Your Committee received comments on this measure from Healthcare Association of Hawaii, Hawai'i Pacific



Health, Hawaii Health Systems Corporation, Maui Health System, and Kaiser Permanente Hawai'i.

Your Committee finds that, in emergency situations, patients sometimes do not have the time or ability to ensure that all emergency treatments they receive will fall within their medical plan coverages, thereby resulting in their receipt of surprise balance billings. Hawaii does not currently impose any limitations on the charges that non-participating emergency care providers can assess on patients after their health insurer has been billed, which can create significant financial hardships. This measure provides important protections to safeguard patients from surprise medical billings in emergency situations.

Your Committee has heard the concerns raised in testimony that this measure, as written, puts the burden on resolving balance billing issues on providers and sets rates at Medicare levels. This can be problematic because the rates Medicare pays generally covers only eighty to ninety percent of costs. Many practitioners in Hawaii have cited insufficient payment for services as a factor that makes it difficult to practice in this State, and rate-setting may further contribute to Hawaii's current physician shortage. Additionally, there are some service lines that Medicare does not pay for, which could create other issues for determining payments. Accordingly, amendments to this measure are necessary to address these concerns.

Your Committee has amended this measure by:

- (1) Deleting language that would have prohibited a non-participating provider from billing the enrollee, managed care plan, or other entity any amount in excess of what the provider would be entitled to charge a Medicare enrollee who receives emergency services that would be owed by a Medicare enrollee to the non-participating provider for the services;
- (2) Inserting language that prohibits a non-participating provider from billing an enrollee any amount in excess of any applicable charges the enrollee would be responsible for if they had received the services from a participating provider;



- (3) Deleting language that would have required non-participating providers to accept certain payments as payments in full for the emergency services rendered;
- (4) Deleting language that would have limited the amounts a managed care plan would have to pay for emergency services in certain situations;
- (5) Deleting language that would have required a health care provider or facility to bill a health carrier only for a health intervention service that is a medical necessity;
- (6) Inserting language that requires a managed care plan to fulfill its obligations to an enrollee and enter into a negotiation with the non-participating provider to resolve any sums owed by the managed care plan, and allowing either party to elect to enter into an independent dispute resolution process if an agreement cannot be reached within forty-five days;
- (7) Inserting language clarifying that no managed care plan shall be required to cover services not required by law or by the terms and conditions of the managed care plan, and clarifying that a non-participating provider shall be entitled to seek the uncovered cost of services rendered from enrollees who have consented to receive services provided by the non-participating provider;
- (8) Inserting language that requires the Insurance Commissioner to refer unresolved disputes between insurers and non-participating providers to an independent dispute resolution entity for binding arbitration;
- (9) Inserting language that requires an arbitrator to consider certain relevant factors;
- (10) Inserting language that allows a provider to bundle multiple claims in a single mediation under certain circumstances;
- (11) Inserting language clarifying which party shall be responsible for payment of the costs and fees of the

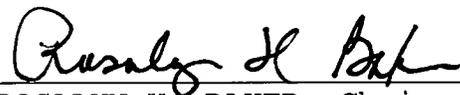


dispute resolution process, under specific circumstances;

- (12) Inserting language that requires the arbitrator to issue a decision no later than forty-five days from the commencement of the binding arbitration;
- (13) Inserting language that allows the Insurance Commissioner to adopt rules consistent with this measure pursuant to chapter 91, Hawaii Revised Statutes;
- (14) Inserting language clarifying that the remedies, penalties, and proceedings regarding non-participating providers under chapter 432E, Hawaii Revised Statutes, shall be invoked and enforced solely and exclusively by the Insurance Commissioner;
- (15) Amending section 1 to reflect its amended purpose; and
- (16) Making conforming technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2423, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2423, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



