State of Arkansas *As Engrossed: H3/30/23 H4/4/23*
94th General Assembly

A Bill

Regular Session, 2023 HOUSE BILL 1312

By: Representatives Perry, *Painter*
By: Senator J. Boyd

For An Act To Be Entitled

AN ACT TO ESTABLISH THE TRANSPORTATION BENEFIT MANAGER ACT; TO REGULATE CONTRACTS OF CERTAIN AMBULANCE PROVIDERS; TO REGULATE CLAIMS AND PRIOR AUTHORIZATION PROCEDURES FOR CERTAIN AMBULANCE SERVICES; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE TRANSPORTATION BENEFIT MANAGER ACT; TO REGULATE CONTRACTS OF CERTAIN AMBULANCE PROVIDERS; AND TO REGULATE CLAIMS AND PRIOR AUTHORIZATION PROCEDURES FOR CERTAIN AMBULANCE SERVICES.

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

SECTION 1. Arkansas Code Title 23, Chapter 99, is amended to add an additional subchapter to read as follows:

Subchapter 16 — Transportation Benefit Manager Act

23-99-1601. Title.

This subchapter shall be known and may be cited as the "Transportation Benefit Manager Act".

23-99-1602. Definitions.

As used in this subchapter:

(1) "Air ambulance" means an aircraft, fixed or rotary wing, utilized for on-scene responses or transports licensed by the Department of Health;

(2) "Air ambulance services" means those services authorized and licensed by the department to provide care and air transportation by air ambulance of subscribers;

(3)(A) "Ambulance" means a vehicle used for transporting any person by stretcher or gurney upon the streets or highways of Arkansas, excluding vehicles intended solely for personal use by immediate family members.

(B) "Ambulance" does not include nonemergency transportation vehicles that may accommodate an individual in an upright position or Fowler's position while in a wheelchair without the aid of emergency medical services personnel;

(4) "Ambulance provider" means an entity that provides transportation and emergency medical services to a patient;

(5) "Ambulance services" means services authorized and licensed by the department to provide care and transportation of patients upon the streets and highways of Arkansas;

(6) "Contracting entity" means:

(A) A healthcare insurer or a subcontractor, affiliate, or other entity that contracts directly or indirectly with an ambulance provider for the delivery of ambulance services to subscribers; or

(B) A transportation benefit manager or a subcontractor, affiliate, or other entity that contracts directly or indirectly with an ambulance provider for the delivery of ambulance services to subscribers;

(7) "Emergency medical services" means:

(A) The transportation and medical care provided to the ill or injured before arrival at a medical facility by licensed emergency medical services personnel or other healthcare provider;

(B) Continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that medical facility; and

(C) Integrated medical care in emergency and nonurgent settings with the oversight of a physician;

(8)(A) "Emergency medical services personnel" means individuals

licensed by the department at any level established by the rules adopted by the State Board of Health under the Emergency Medical Services Act, § 20-13-201 et seq., and authorized to perform the services stated in the rules.

(B) "Emergency medical services personnel" includes without limitation:

(i) Emergency medical technicians;

(ii) Advanced emergency medical technicians;

(iii) Paramedics;

(iv) Emergency medical services instructors; and

(v) Emergency medical services instructor trainers;

(9)(A) "Health benefit plan" means a plan, policy, contract, certificate, agreement, or other evidence of coverage for healthcare services offered, issued, renewed, or extended in this state by a healthcare insurer, including emergency medical services.

(B) "Health benefit plan" includes nonfederal governmental plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2023.

(C) "Health benefit plan" does not include:

(i) A disability income plan;

(ii) A credit insurance plan;

(iii) Insurance coverage issued as a supplement to liability insurance;

(iv) A medical payment under automobile or homeowners insurance plans;

(v) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vi) A plan that provides only indemnity for hospital confinement;

(vii) An accident-only plan;

(viii) A specified disease plan;

(ix) A long-term-care-only plan;

(x) A dental-only plan;

(xi) A vision-only plan;

(xii) Medicaid; or

(xiii) Any state or local governmental employee plan;

(10)(A) "Healthcare insurer" means an entity that is subject to state insurance regulation and provides coverage for health benefits in this state.

(B) "Healthcare insurer" includes:

(i) An insurance company;

(ii) A health maintenance organization;

(iii) A hospital and medical service corporation;

(iv) A risk-based provider organization; and

(v) A sponsor of a nonfederal self-funded governmental plan.

(C) "Healthcare insurer" does not include:

(i) Medicaid; or

(ii) Any entity that administers any state or local governmental employee plan;

(11) "Medicaid" means the state and federal medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.;

(12) "Medical facility" means a hospital, medical clinic, physician's office, nursing home, or other healthcare facility;

(13)(A) "Prior authorization" means the process by which a transportation benefit manager determines the medical necessity of otherwise covered ambulance services before ambulance services are rendered, including without limitation preadmission review, pretreatment review, utilization review, case management, and fail first protocol.

(B) "Prior authorization" may include the requirement that a subscriber, healthcare provider, or ambulance provider notify the health insurer or transportation benefit manager of the subscriber's intent to receive ambulance services before ambulance services are provided;

(14)(A) "Subscriber" means an individual eligible to receive coverage of ambulance services by a healthcare insurer under a health benefit plan.

(B) "Subscriber" includes a subscriber's legally authorized representative; and

(15)(A) "Transportation benefit manager" means an individual or entity that assumes responsibility for all administrative tasks associated with the ambulance services offered by a healthcare insurer, including

without limitation utilization management, determination of appropriate mode of transport, direction of missions, and invoice processing, and performs prior authorization for at least one (1) of the following:

(i) A healthcare insurer;

(ii) A preferred provider organization or health maintenance organization; or

(iii) Any other individual or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a healthcare provider in this state under a policy, health benefit plan, or contract.

(B) A healthcare insurer is a transportation benefit manager if the healthcare insurer performs prior authorization.

(C) "Transportation benefit manager" does not include an insurer of automobile, homeowners, or casualty and commercial liability insurance or the insurer's employees, agents, or contractors.

23-99-1603. Contracts.

(a) An ambulance provider may contract directly or indirectly with a contracting entity as a network provider of ambulance services.

(b) An ambulance provider shall not be required to participate as an in-network provider of a transportation benefit manager.

22-99-1604. Prior authorization.

(a) A contracting entity shall not require prior authorization for:

(1) Ground or air prehospital transportation; or

(2) Ground or air emergent or urgent ambulance transportation from one (1) hospital or medical facility to another hospital or medical facility in order to obtain medically needed diagnostic or medical therapeutic services.

(b) A contracting entity may require a prior authorization for non-urgent and nonemergent ground or air ambulance services by an air ambulance.

(c) A decision on a request for prior authorization by a transportation benefit manager shall include a determination as to whether or not the individual is covered by a health benefit plan and eligible to receive the requested ambulance services under the health benefit plan as a subscriber.

(d) A transportation benefit manager shall not rescind, limit, condition, or restrict a prior authorization based upon medical necessity.

(e) A transportation benefit manager shall provide ambulance providers with a direct contact number, that is answered twenty-four (24) hours a day, seven (7) days a week, in which to obtain prior authorization for ambulance services.

(f)(1) Determination of prior authorization for ambulance services between medical facilities shall be provided or declined within twenty (20) minutes of the ambulance provider's or medical facility's placing a request for determination.

(2) If not denied within twenty (20) minutes, the ambulance services shall be deemed automatically approved.

(g) If a medical facility is required to obtain a prior authorization on behalf of the ambulance provider, the transportation benefit manager shall advise the ambulance provider of the requirement before ambulance transport.

23-99-1605. Claims.

(a) A contracting entity shall pay a claim for ambulance services for which prior authorization was received regardless of the terminology used by the transportation benefit manager or health benefit plan within thirty (30) days of receipt of the claim from an ambulance provider, unless:

(1) Authorized ambulance services were never performed; or

(2) There is specific information available for review by the appropriate state or federal agency that the subscriber or ambulance provider has engaged in material misrepresentation, fraud, or abuse regarding the claim for the authorized ambulance services.

(b)(1) A healthcare insurer or transportation benefit manager shall pay two hundred fifty percent (250%) of the Medicare Ambulance Fee Schedule, Rural Rate for a claim for ambulance services to an ambulance provider.

(2) An ambulance provider shall accept the payment under subdivision (b)(1) of this section as payment in full for services provided to the subscriber.

(3) An ambulance provider shall not balance bill or otherwise demand a payment from the subscriber other than a deductible, copayment, or coinsurance required under the subscriber's health benefit plan.

(c) Ambulance services authorized or guaranteed for payment under this

section for which the prior authorization is not rescinded or reversed under subsection (a) of this section are not subject to audit recoupment.

(d) A claim submitted by an ambulance provider shall include any information as required by the Insurance Commissioner.

23-99-1606. Enforcement — Rules.

(a) A contracting entity is subject to the Trade Practices Act, § 23-66-201 et seq.

(b) The expenses of implementing this subchapter shall not be used as justification to increase premiums or decrease payments to any ambulance provider or medical facility.

(c) The Insurance Commissioner may promulgate rules necessary to implement and enforce this subchapter.

/s/Perry