

SENATE BILL 2348

By Swann

AN ACT to amend Tennessee Code Annotated, Title 24  
and Title 29, relative to actions to recover  
healthcare billing charges.

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

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) The rate of reimbursement negotiated privately between a health insurance carrier and a healthcare provider shall be protected as a trade secret and confidential commercial information.

(b) Notwithstanding subsection (a), an enrollee who is a party to the civil action described in the Healthcare Billing Collections Act of 2018 compiled in title 29, chapter 40, is entitled to discovery of the non-participating provider's contracted rates for the medical services at issue in the civil action in accordance with the provisions of the Tennessee Rules of Civil Procedure. A health insurance carrier may seek protective orders from the court to protect from public disclosure protected information described in subsection (a).

SECTION 2. Tennessee Code Annotated, Title 29, is amended by adding the following as a new chapter:

**29-40-101.** This chapter shall be known and may be cited as the "Healthcare Billing Collections Act of 2018."

**29-40-102.** As used in this chapter:

(1) "Average contracted rate" means a non-participating provider's mean rate of reimbursement for healthcare services as calculated by dividing the sum

of the non-participating provider's contracted reimbursement rates for the services that are the basis for billed charges by the number of third-party payers with which the non-participating provider had a valid network agreement. In calculating the average contracted rate, all values shall be derived from those that were valid at the time the non-participating provider rendered the services that are the basis for the billed charges;

(2) "Billed charges" means the total charges billed to an enrollee for healthcare services rendered by a non-participating provider. "Billed charges" means the gross billed price of services rendered by a non-participating provider, and does not represent an amount paid by or on behalf of an enrollee or an amount collected by the provider;

(3) "Enrollee" means a policyholder, subscriber, or other individual participating in a health benefit plan offered or administered by a health insurance carrier in this state;

(4) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurance carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services;

(5) "Health insurance carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, including a health insurance company, a health maintenance organization, a hospital and medical services corporation, or any other entity providing a plan of health insurance, health benefits, or healthcare services; and

(6) "Non-participating provider" means any practitioner, facility, or entity that is duly licensed under title 63 or title 68 or otherwise authorized in this state

to furnish healthcare services that has not contracted with an enrollee's health insurance carrier for the reimbursement of healthcare services.

**29-40-103.**

(a) Notwithstanding any law to the contrary, this chapter shall apply in any civil action arising out of the alleged obligations of an enrollee for the payment of medical services rendered by a non-participating healthcare provider, including a claim based on the theory of contract, contract implied in fact, or contract implied in law.

(b) A non-participating healthcare provider, in a civil action against an enrollee, shall not be entitled to recover billed charges that exceed one hundred and twenty four percent (124%) of the healthcare provider's average contracted rate for the services on which the billed charges are based.

(c) If a civil action described in subsection (a) results in a determination that a healthcare provider's billed charges are not recoverable, then the enrollee:

(1) Shall be considered as the prevailing party in the proceeding;

and

(2) Shall be entitled to recover attorney fees incurred in defending a claim to recover a healthcare provider's billed charges or in obtaining a judgment that the health care provider's billed charges are not recoverable.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect January 1, 2019, the public welfare requiring it.