6915 ANTOINE, SUITE E
HOUSTON, TEXAS 77091
713-683-6363

State of Texas
House of Representatives
SYLVESTER TURNER
STATE REPRESENTATIVE

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0554

RQ-0078-GA

July 10, 2003

Nancy Fuller
Director, Opinions Committee
Office of the Attorney General
209 West 14th St.
Austin, TX 78711

FILE # ML-43182-03
I.D. # 43182

Re: Clarification of Attorney General Opinion GA-0040

Dear Ms. Fuller:

I respectfully request your clarification on questions arising under Attorney General Opinion GA-0040, relating to the Texas Department of Insurance's authority to prevent physicians who are not contracted with an HMO from recovering the balance of billed charges from an HMO enrollee.

In Opinion No. GA-0040, you stated that the Texas HMO Act does not prevent a noncontracted physician from billing an HMO enrollee for charges not paid by the HMO. I would like some clarification on this issue.

An HMO is required to hold harmless every enrollee for medical claims payments for covered services. If the claim is for a covered service, then the HMO is required to ensure that the enrollee is not billed regardless of the situation.

By permitting the out-of-area providers to balance bill the enrollees, these providers would have carte blanche to charge whatever they would like for out-of-area claims. If a provider charges $10 million to set a broken arm in an out-of-area emergency room, then the HMO would be required to pay the $10 million charge. The HMO would pay the usual and customary charge for the service, but the provider would balance bill the member for the remainder of the charges. Since the HMO is required to prevent the member from being balance billed, the HMO would be required to pay to the provider the difference between the usual and customary rate and the $10 million in billed charges.

Currently, there are no restrictions on the level of billed charges. As such, and in accordance with Opinion No. GA-0040, any provider that is not contracted with an HMO and provides covered services to such HMO's enrollees is permitted to charge any amount of money the provider desires, and the HMO will be required to pay such amount.

By offering this opinion, the Attorney General is in effect setting an unlimited ceiling on the rates that may be charged by noncontracted providers and will have to be paid by HMO's.

Texas Insurance Code 20a.18F states that HMO's "shall fully reimburse the non-network provider at the usual and customary or an agreed upon rate."

If a provider is "fully reimbursed" by the HMO for a covered service, then the provider should not have any recourse against the patient or another third party payor. What is there left to balance bill if the provider has been "fully reimbursed"? Is the provider permitted to charge additional fees even though the provider has been previously "fully reimbursed"?

The board rules of the Texas State Board of Medical Examiners, Chapter 190.1(2)(J) states that unprofessional and dishonorable conduct includes "submitting billing statements to a patient or a third party payor that are improper, fraudulent or that are otherwise in violation of §311.0025 of the Health and Safety Code."

Does the balance billing of an enrollee constitute an improper or fraudulent submission of billing statements to a patient where the provider/physician has previously been "fully reimbursed" in accordance with TIC 20A.18F?

Thank you for your consideration of this request for clarification of Attorney General Opinion No. GA-0040 and please contact us if you need further information.

Sincerely,

Sylvester Turner

Sylvester Turner
Speaker Pro Tempore