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October 20, 2020

**RQ-0385-KP**

**FILE# ML-48896-20**

**I.D.# 48896**

Honorable Ken Paxton  
Texas Attorney General  
300 W. 15<sup>th</sup> St.  
Austin, TX 78701  
[Opinion.committee@aog.texas.gov](mailto:Opinion.committee@aog.texas.gov)

***RE: Request for Opinion regarding Section 20.05 of the Texas Business and Commerce Code and its application to self-funded health insurance plans.***

Dear Mr. Paxton and Opinion Committee:

This letter serves as a formal request for your opinion regarding the application of Section 20.05 of the Texas Business and Commerce Code to self-funded health insurance plans.

In July of 2019, Senate Bill 1037 was enacted by the Texas State Legislature (see attached) and specifically provides:

*“...SECTION 1. Section 20.05, Business & Commerce Code, is amended by amending subsection (a) and adding Subsection (d) to read as follows:*

*(a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:*

*(5) a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for and out-of-network benefit claim; ...”*

Briefly, and by way of background, many employers in Texas are turning to reference based pricing to significantly reduce what is typically the second largest item in their budget which is health care. Unlike traditional PPO's or indemnity plans, reference base pricing does not have a

network and is a defined benefit. Indemnity plans reimburse hospitals and ancillary providers based upon utilizing a benchmark tied to Medicare. Unfortunately, a small percentage of balance billing does occur and in addition to suing the patient in small claims court, many hospitals in Texas and their collection agencies immediately impair the patient's credit despite the existence of Senate Bill 1037. The reality is that for many of these individuals that appear in not only this county's courts but across Texas, it is not the outstanding balance that has a deleterious effect on these individuals but rather the credit impairment which can take years to repair.

**Request for Opinion:** Does the statutory language "covered by a health benefit plan" include self-funded plans that have implemented a reference base pricing program? Additionally, does Senate Bill 1037 prohibit collection agencies of hospitals' in the state of Texas from furnishing to a credit bureau information that would impair the creditworthiness of individuals for any outstanding balance for medical bills other than copayments, deductibles and coinsurance whose employers have adopted a reference base pricing program?

Thank you in advance for your opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara L. Cochran-May". The signature is fluid and cursive, with a large loop at the end.

TAMARA L. COCHRAN-MAY  
San Patricio County Attorney

S.B. No. 1037

AN ACT

relating to limitations on the information reported by consumer reporting agencies.

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

SECTION 1. Section 20.05, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:

(1) a case under Title 11 of the United States Code or under the federal Bankruptcy Act in which the date of entry of the order for relief or the date of adjudication predates the consumer report by more than 10 years;

(2) a suit or judgment in which the date of entry predates the consumer report by more than seven years or the governing statute of limitations, whichever is longer;

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crime in which the date of disposition, release, or parole predates the consumer report by more than seven years; [~~or~~]

(5) a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim; or

(6) another item or event that predates the consumer report by more than seven years.

(d) In this section:

(1) "Emergency care provider" means a physician, health care practitioner, facility, or other health care provider who provides emergency care.

(2) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(3) "Facility-based provider" means a physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.

(4) "Health care practitioner" means an individual who

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Act does not receive the vote necessary for immediate effect, this

Act takes effect September 1, 2019.

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\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1037 passed the Senate on April 8, 2019, by the following vote: Yeas 25, Nays 5.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1037 passed the House on May 14, 2019, by the following vote: Yeas 133, Nays 8, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date