SENATE, No. 1177

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED JANUARY 31, 2022

Sponsored by:
Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Revises out-of-network arbitration process.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/10/2022)

AN ACT revising the out-of-network arbitration process and amending P.L.2018, c.32.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 9 of P.L.2018, c.32 (C.26:2SS-9) is amended to read as follows:

9. Notwithstanding any law, rule, or regulation to the contrary:

a. With respect to a carrier, if a covered person receives inadvertent out-of-network services, or services at an in-network or out-of-network health care facility on an emergency or urgent basis, the carrier shall ensure that the covered person incurs no greater out-of-pocket costs than the covered person would have incurred with an in-network health care provider for covered services. Pursuant to sections 7 and 8 of this act, the out-of-network provider shall not bill the covered person, except for applicable deductible, copayment, or coinsurance amounts that would apply if the covered person utilized an in-network health care provider for the covered services. In the case of services provided to a member of a self-funded plan that does not elect to be subject to the provisions of this section, the provider shall be permitted to bill the covered person in excess of the applicable deductible, copayment, or coinsurance amounts.

b. (1) With respect to inadvertent out-of-network services, or services at an in-network or out-of-network health care facility on an emergency or urgent basis, benefits provided by a carrier that the covered person receives for health care services shall be assigned to the out-of-network health care provider, which shall require no action on the part of the covered person. Once the benefit is assigned as provided in this subsection:

(a) any reimbursement paid by the carrier shall be paid directly to the out-of-network provider; and

(b) the carrier shall provide the out-of-network provider with a written remittance of payment that specifies the proposed reimbursement and the applicable deductible, copayment, or coinsurance amounts owed by the covered person.

(2) An entity providing or administering a self-funded health benefits plan that elects to participate in this section pursuant to subsection d. of this section, shall comply with the provisions of paragraph (1) of this subsection.

c. If inadvertent out-of-network services or services provided at an in-network or out-of-network health care facility on an emergency or urgent basis are performed in accordance with subsection a. of this section, the out-of-network provider may bill

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

the carrier for the services rendered. The carrier may pay the billed amount or the carrier shall determine within 20 days from the date of the receipt of the claim for the services whether the carrier considers the claim to be excessive, and if so, the carrier shall notify the provider of this determination within 20 days of the receipt of the claim. If the carrier provides this notification, the carrier and the provider shall have **[**30**]** 60 days from the date of this notification to negotiate a settlement. The carrier may attempt to negotiate a final reimbursement amount with the out-of-network health care provider which differs from the amount paid by the carrier pursuant to this subsection. If there is no settlement reached after the **[**30**]** 60 days, the carrier shall pay the provider their final offer for the services. If the carrier and provider cannot agree on the final offer as a reimbursement rate for these services, the carrier, provider, or covered person, as applicable, may initiate binding arbitration within **[**30**]** 90 days of the final offer, pursuant to section 10 or 11 of this act. In addition, in the event that arbitration is initiated pursuant to section 10 of this act, the payment shall be subject to the binding arbitration provisions of paragraphs (4) and (5) of subsection b. of section 10 of this act.

d. With respect to an entity providing or administering a self-funded health benefits plan and its plan members, this section shall only apply if the plan elects to be subject to the provisions of this section. To elect to be subject to the provisions of this section, the self-funded plan shall provide notice, on an annual basis, to the department, on a form and in a manner prescribed by the department, attesting to the plan's participation and agreeing to be bound by the provisions of this section. The self-funded plan shall amend the employee benefit plan, coverage policies, contracts and any other plan documents to reflect that the benefits of this section shall apply to the plan's members.

(cf: P.L.2018, c.32, s.9)

2. Section 10 of P.L.2018, c.32 (C.26:2SS-10) is amended to read as follows:

10. a. If attempts to negotiate reimbursement for services provided by an out-of-network health care provider, pursuant to subsection c. of section 9 of this act, do not result in a resolution of the payment dispute, and the difference between the carrier's and the provider's final offers is not less than $1,000, for a billed amount of $2,500 or more and not less than $500 for a billed amount of less than $2,500, the carrier or out-of-network health care provider may initiate binding arbitration to determine payment for the services.

b. The binding arbitration shall adhere to the following requirements:

(1) The party requesting arbitration shall notify the other party that arbitration has been initiated and state its final offer before arbitration, which in the case of the carrier shall be the amount paid

pursuant to subsection c. of section 9 of this act. In response to this notice, the out-of-network provider shall inform the carrier of its final offer before the arbitration occurs;

(2) Arbitration shall be initiated by filing a request with the department;

(3) The department shall contract, through the request for proposal process, every three years, with one or more entities that have experience in health care pricing arbitration. The arbitrators shall be **[**American Arbitration Association certified arbitrators**]** certified by the department. The department may initially utilize the entity engaged under the "Health Claims Authorization, Processing, and Payment Act," P.L.2005, c.352 (C.17B:30-48 et seq.), for arbitration under this act; however, after a period of one year from the effective date of this act, the selection of the arbitration entity shall be through the Request for Proposal process. Claims that are subject to arbitration pursuant to the provisions of this act, which previously would be subject to arbitration pursuant to the "Health Claims Authorization, Processing, and Payment Act," shall instead be subject to this act;

(4) The arbitration shall consist of a review of the written submissions by both parties, which shall include the final offer for the payment by the carrier for the out-of-network health care provider's fee made pursuant to subsection c. of section 9 of this act and the final offer by the out-of-network provider for the fee the provider will accept as payment from the carrier; and

(5) The arbitrator's decision shall be one of the two amounts submitted by the parties as their final offers and shall be binding on both parties. The decision of the arbitrator shall include detailed written findings and shall be issued within 30 days after the request is filed with the department. The detailed written findings shall be an analysis of the decision including, but not be limited to, information concerning any databases, previous awards, or other documentation or arguments that contributed to the arbitrator’s decision. The arbitrator's expenses and fees shall be split equally among the parties except in situations in which the arbitrator determines that the payment made by the carrier was not made in good faith, in which case the carrier shall be responsible for all of the arbitrator's expenses and fees. Each party shall be responsible for its own costs and fees, including legal fees if any.

c. (1) The amount awarded by the arbitrator that is in excess of any payment already made pursuant to subsection c. of section 9 of this act shall be paid within 20 days of the arbitrator's decision as provided in subsection b. of this section.

(2) The interest charges for overdue payments, pursuant to P.L.1999, c.154 (C.17B:30-23 et al.), shall not apply during the pendency of a decision under subsection b. of this section and any interest required to be paid a provider pursuant to P.L.1999, c.154 (C.17B:30-23 et al.) shall not accrue until after 20 days following

an arbitrator's decision as provided in subsection b. of this section, but in no circumstances longer than 150 days from the date that the out-of-network provider billed the carrier for services rendered, unless both parties agree to a longer period of time.

d. This section shall apply only if the covered person complies with any applicable preauthorization or review requirements of the health benefits plan regarding the determination of medical necessity to access in-network inpatient or outpatient benefits.

e. This section shall not apply to a covered person who knowingly, voluntarily, and specifically selected an out-of-network provider for health care services.

f. In the event an entity providing or administering a self-funded health benefits plan elects to be subject to the provisions of section 9 of this act, as provided in subsection d. of that section, the provisions of this section shall apply to a self-funded plan in the same manner as the provisions of this section apply to a carrier. If a self-funded plan does not elect to be subject to the provision of section 9 of this act, a member of that plan may initiate binding arbitration as provided in section 11 of this act.

(cf: P.L.2018, c.32, s.10.)

3. This act shall take effect immediately.

STATEMENT

This bill amends the “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act” to revise certain aspects of the arbitration processes established in that act for claims involving health insurance carriers subject to the provisions of the act.

The bill extends the amount of time that the insurance carrier and healthcare provider have to negotiate a settlement in the event of an inadvertent use of out-of-network services from 30 to 60 days, and extends the deadline for the carrier, provider, or covered person to initiate binding arbitration in the event of a failure to reach a settlement from within 30 days of the final offer to within 90 days of the final offer. The bill provides that, in order for binding arbitration to be initiated, the difference between a carrier’s and provider’s final offers be $1,000 or higher for a billed amount of $2,500 or more or $500 or higher for a billed amount of less than $2,500.

The bill changes the certification requirement for arbitrators from a certification from the American Arbitration Association to a certification from the Department of Banking and Insurance.

Finally, the bill requires an arbitrator to include detailed written findings with each decision. The detailed written findings are to be an analysis of the decision including, but not be limited to,

information concerning any databases, previous awards, or other documentation or arguments that contributed to the arbitrator's decision.