

SENATE, No. 1870

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Revises certain provisions of out-of-network health care services arbitration law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning health insurance and health care providers and
2 supplementing and amending P.L.2018, c.32.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) a. The Commissioner of Banking and
8 Insurance shall establish a liaison within the department to assist
9 carriers, providers, and covered persons with any issues that may
10 arise concerning an arbitration conducted pursuant to P.L.2018,
11 c.32 (C.26:2SS-1 et seq.). The liaison shall also communicate with
12 any arbitrator contracted with by the department pursuant to section
13 10 of P.L.2018, c.32 (C.26:2SS-10).

14 b. The commissioner shall establish procedures for the liaison
15 to receive information from, provide information to, and coordinate
16 information among arbitrators, carriers, providers, and covered
17 persons, concerning any arbitration or potential arbitration. Contact
18 information for the liaison shall be prominently displayed on the
19 department's website. The liaison shall not provide legal counsel to
20 any party.

21
22 2. Section 10 of P.L.2018, c.32 (C.26:2SS-10) is amended to
23 read as follows:

24 10. a. If attempts to negotiate reimbursement for services
25 provided by an out-of-network health care provider, pursuant to
26 subsection c. of section 9 of **[this act]** P.L.2018, c.32 (C.26:2SS-9),
27 do not result in a resolution of the payment dispute, and the
28 difference between the carrier's and the provider's final offers is not
29 less than \$1,000, the carrier or out-of-network health care provider
30 may initiate binding arbitration to determine payment for the
31 services.

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

34 (1) The party requesting arbitration shall notify the other party
35 that arbitration has been initiated and state its final offer before
36 arbitration, which in the case of the carrier shall be the amount paid
37 pursuant to subsection c. of section 9 of **[this act]** P.L.2018, c.32
38 (C.26:2SS-9). In response to this notice, the out-of-network
39 provider shall inform the carrier of its final offer before the
40 arbitration occurs;

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

43 (3) The department shall contract, through the request for
44 proposal process, every three years, with one or more entities that
45 have experience in health care pricing arbitration. The arbitrators

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 thus is new matter.

1 shall be American Arbitration Association certified arbitrators. The
2 department may initially utilize the entity engaged under the
3 "Health Claims Authorization, Processing, and Payment Act,"
4 P.L.2005, c.352 (C.17B:30-48 et seq.), for arbitration under this act;
5 however, after a period of one year from the effective date of this
6 act, the selection of the arbitration entity shall be through the
7 Request for Proposal process. Claims that are subject to arbitration
8 pursuant to the provisions of this act, which previously would be
9 subject to arbitration pursuant to the "Health Claims Authorization,
10 Processing, and Payment Act," shall instead be subject to this act;

11 (4) The arbitration shall consist of a review of the written
12 submissions by both parties, which shall include the final offer for
13 the payment by the carrier for the out-of-network health care
14 provider's fee made pursuant to subsection c. of section 9 of **[this**
15 **act]** P.L.2018, c.32 (C.26:2SS-9) and the final offer by the out-of-
16 network provider for the fee the provider will accept as payment
17 from the carrier; **[and]**

18 (5) The arbitrator's decision shall be one of the two amounts
19 submitted by the parties as their final offers and shall be binding on
20 both parties. The decision of the arbitrator shall include written
21 findings and shall be issued within 30 days after the request is filed
22 with the department. The arbitrator's expenses and fees shall be
23 split equally among the parties except in situations in which the
24 arbitrator determines that the payment made by the carrier was not
25 made in good faith, in which case the carrier shall be responsible
26 for all of the arbitrator's expenses and fees. Each party shall be
27 responsible for its own costs and fees, including legal fees if any;
28 and

29 (6) All evidence submitted by the parties to the arbitration shall
30 be available for examination by all parties to the arbitration. In
31 considering any evidence submitted by the parties with regard to the
32 cost of comparable services, the arbitrator shall give the greatest
33 evidentiary weight to the cost of comparable services performed at
34 or closest to the provider's primary place of business.

35 c. (1) The amount awarded by the arbitrator that is in excess of
36 any payment already made pursuant to subsection c. of section 9 of
37 **[this act]** P.L.2018, c.32 (C.26:2SS-9) shall be paid within 20 days
38 of the arbitrator's decision as provided in subsection b. of this
39 section.

40 (2) The interest charges for overdue payments, pursuant to
41 P.L.1999, c.154 (C.17B:30-23 et al.), shall not apply during the
42 pendency of a decision under subsection b. of this section and any
43 interest required to be paid a provider pursuant to P.L.1999, c.154
44 (C.17B:30-23 et al.) shall not accrue until after 20 days following
45 an arbitrator's decision as provided in subsection b. of this section,
46 but in no circumstances longer than 150 days from the date that the
47 out-of-network provider billed the carrier for services rendered,
48 unless both parties agree to a longer period of time.

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

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

8 f. In the event an entity providing or administering a self-
9 funded health benefits plan elects to be subject to the provisions of
10 section 9 of **【this act】 P.L.2018, c.32 (C.26:2SS-9)**, as provided in
11 subsection d. of that section, the provisions of this section shall
12 apply to a self-funded plan in the same manner as the provisions of
13 this section apply to a carrier. If a self-funded plan does not elect to
14 be subject to the provision of section 9 of **【this act】 P.L.2018, c.32**
15 **(C.26:2SS-9)**, a member of that plan may initiate binding arbitration
16 as provided in section 11 of **【this act】 P.L.2018, c.32 (C.26:2SS-**
17 **11)**.

18 g. The commissioner shall establish a process through which a
19 party requesting arbitration may appeal a decision of an arbitrator to
20 deny the request for arbitration. The appeal process shall allow for
21 the review and reversal of any denial of a request for arbitration.
22 (cf: P.L.2018, c.32, s.10.)
23

24 3. This act shall take effect on the 90th day next following
25 enactment.
26
27

28 STATEMENT

29

30 This bill revises certain provisions of the out-of-network health
31 care services law concerning binding arbitration.

32 The bill requires the Commissioner of Banking and Insurance to
33 establish a liaison within the Department of Banking and Insurance
34 to assist carriers, providers, and covered persons with any issues
35 that may arise concerning an arbitration conducted pursuant to the
36 out-of-network health care services law. The liaison is also
37 required to communicate with any arbitrator contracted with by the
38 department pursuant to that law.

39 The bill requires the commissioner to establish procedures for
40 the liaison to receive information from, provide information to, and
41 coordinate information among arbitrators, carriers, providers, and
42 covered persons, concerning any arbitration or potential arbitration.
43 The bill provides that the liaison may not provide legal counsel to
44 any party to an arbitration.

45 The bill provides that all evidence submitted by the parties to the
46 arbitration is to be available for examination by all parties to the
47 arbitration. In considering any evidence submitted by the parties
48 with regard to the cost of comparable services, the bill requires the

1 arbitrator to give the greatest evidentiary weight to the cost of
2 comparable services performed at or closest to the provider's
3 primary place of business.

4 The bill requires the commissioner to establish a process through
5 which a party requesting arbitration may appeal a decision of an
6 arbitrator to deny the request for arbitration. The appeal process
7 must allow for the review and reversal of any denial of a request for
8 arbitration.