

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 83, Page 10, Section 376.454, Line 59, by inserting after all of said line the
2 following:

3
4 "376.690. 1. As used in this section, the following terms shall mean:

5 (1) "Emergency medical condition", the same meaning given to such term in section
6 376.1350;

7 (2) "Facility", the same meaning given to such term in section 376.1350;

8 (3) "Health care professional", the same meaning given to such term in section 376.1350;

9 (4) "Health carrier", the same meaning given to such term in section 376.1350;

10 (5) "Unanticipated out-of-network care", health care services received by a patient in an in-
11 network facility from an out-of-network health care professional from the time the patient presents
12 with an emergency medical condition until the time the patient is discharged.

13 2. (1) Health care professionals [~~may~~] shall send any claim for charges incurred for
14 unanticipated out-of-network care to the patient's health carrier within one hundred eighty days of
15 the delivery of the unanticipated out-of-network care on a U.S. Centers of Medicare and Medicaid
16 Services Form 1500, or its successor form, or electronically using the 837 HIPAA format, or its
17 successor.

18 (2) Within forty-five processing days, as defined in section 376.383, of receiving the health
19 care professional's claim, the health carrier shall offer to pay the health care professional a
20 reasonable reimbursement for unanticipated out-of-network care based on the health care
21 professional's services. If the health care professional participates in one or more of the carrier's
22 commercial networks, the offer of reimbursement for unanticipated out-of-network care shall be the
23 amount from the network which has the highest reimbursement.

24 (3) If the health care professional declines the health carrier's initial offer of reimbursement,
25 the health carrier and health care professional shall have sixty days from the date of the initial offer
26 of reimbursement to negotiate in good faith to attempt to determine the reimbursement for the
27 unanticipated out-of-network care.

28 (4) If the health carrier and health care professional do not agree to a reimbursement amount
29 by the end of the sixty-day negotiation period, the dispute shall be resolved through an arbitration
30 process as specified in subsection 4 of this section.

31 (5) To initiate arbitration proceedings, either the health carrier or health care professional
32 must provide written notification to the director and the other party within one hundred twenty days
33 of the end of the negotiation period, indicating their intent to arbitrate the matter and notifying the
34 director of the billed amount and the date and amount of the final offer by each party. A claim for
35 unanticipated out-of-network care may be resolved between the parties at any point prior to the
36 commencement of the arbitration proceedings. Claims may be combined for purposes of arbitration,

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1 but only to the extent the claims represent similar circumstances and services provided by the same
2 health care professional, and the parties attempted to resolve the dispute in accordance with
3 subdivisions (3) to (5) of this subsection.

4 (6) No health care professional who sends a claim to a health carrier under subsection 2 of
5 this section shall send a bill to the patient for any difference between the reimbursement rate as
6 determined under this subsection and the health care professional's billed charge.

7 3. (1) When unanticipated out-of-network care is provided, the health care professional who
8 sends a claim to a health carrier under subsection 2 of this section may bill a patient for no more
9 than the cost-sharing requirements described under this section.

10 (2) Cost-sharing requirements shall be based on the reimbursement amount as determined
11 under subsection 2 of this section.

12 (3) The patient's health carrier shall inform the health care professional of its enrollee's cost-
13 sharing requirements within forty-five processing days of receiving a claim from the health care
14 professional for services provided.

15 (4) The in-network deductible and out-of-pocket maximum cost-sharing requirements shall
16 apply to the claim for the unanticipated out-of-network care.

17 4. The director shall ensure access to an external arbitration process when a health care
18 professional and health carrier cannot agree to a reimbursement under subdivision (3) of subsection
19 2 of this section. In order to ensure access, when notified of a parties' intent to arbitrate, the director
20 shall randomly select an arbitrator for each case from the department's approved list of arbitrators or
21 entities that provide binding arbitration. The director shall specify the criteria for an approved
22 arbitrator or entity by rule. The costs of arbitration shall be shared equally between and will be
23 directly billed to the health care professional and health carrier. These costs will include, but are not
24 limited to, reasonable time necessary for the arbitrator to review materials in preparation for the
25 arbitration, travel expenses and reasonable time following the arbitration for drafting of the final
26 decision.

27 5. At the conclusion of such arbitration process, the arbitrator shall issue a final decision,
28 which shall be binding on all parties. The arbitrator shall provide a copy of the final decision to the
29 director. The initial request for arbitration, all correspondence and documents received by the
30 department and the final arbitration decision shall be considered a closed record under section
31 374.071. However, the director may release aggregated summary data regarding the arbitration
32 process. The decision of the arbitrator shall not be considered an agency decision nor shall it be
33 considered a contested case within the meaning of section 536.010.

34 6. The arbitrator shall determine a dollar amount due under subsection 2 of this section
35 between one hundred twenty percent of the Medicare-allowed amount and the seventieth percentile
36 of the usual and customary rate for the unanticipated out-of-network care, as determined by
37 benchmarks from independent nonprofit organizations that are not affiliated with insurance carriers
38 or provider organizations.

39 7. When determining a reasonable reimbursement rate, the arbitrator shall consider the
40 following factors if the health care professional believes the payment offered for the unanticipated
41 out-of-network care does not properly recognize:

42 (1) The health care professional's training, education, or experience;

43 (2) The nature of the service provided;

44 (3) The health care professional's usual charge for comparable services provided;

45 (4) The circumstances and complexity of the particular case, including the time and place
46 the services were provided; and

47 (5) The average contracted rate for comparable services provided in the same geographic
48 area.

49 8. The enrollee shall not be required to participate in the arbitration process. The health care

1 professional and health carrier shall execute a nondisclosure agreement prior to engaging in an
2 arbitration under this section.

3 9. ~~[This section shall take effect on January 1, 2019.~~

4 ~~10.]~~ The department of insurance, financial institutions and professional registration may
5 promulgate rules and fees as necessary to implement the provisions of this section, including but not
6 limited to procedural requirements for arbitration. Any rule or portion of a rule, as that term is
7 defined in section 536.010, that is created under the authority delegated in this section shall become
8 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
9 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
10 powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective
11 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
12 rulemaking authority and any rule proposed or adopted after August 28, 2018, shall be invalid and
13 void."; and
14

15 Further amend said bill by amending the title, enacting clause, and intersectional references
16 accordingly.