

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 756

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PFAUTSCH.

1765H.01P

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 376.690, RSMo, and to enact in lieu thereof one new section relating to unanticipated out-of-network health care services.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 376.690, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 376.690, to read as follows:

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

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

28 (5) To initiate arbitration proceedings, either the health carrier or health care professional  
29 must provide written notification to the director and the other party within one hundred twenty  
30 days of the end of the negotiation period, indicating their intent to arbitrate the matter and  
31 notifying the director of the billed amount and the date and amount of the final offer by each  
32 party. A claim for unanticipated out-of-network care may be resolved between the parties at any  
33 point prior to the commencement of the arbitration proceedings. Claims may be combined for  
34 purposes of arbitration, but only to the extent the claims represent similar circumstances and  
35 services provided by the same health care professional, and the parties attempted to resolve the  
36 dispute in accordance with subdivisions (3) to (5) of this subsection.

37 (6) No health care professional who sends a claim to a health carrier under subsection  
38 2 of this section shall send a bill to the patient for any difference between the reimbursement rate  
39 as determined under this subsection and the health care professional's billed charge.

40 3. (1) When unanticipated out-of-network care is provided, the health care professional  
41 who sends a claim to a health carrier under subsection 2 of this section may bill a patient for no  
42 more than the cost-sharing requirements described under this section.

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

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

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

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

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

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

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

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

76           (2) The nature of the service provided;

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

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

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

82           8. The enrollee shall not be required to participate in the arbitration process. The health  
83 care professional and health carrier shall execute a nondisclosure agreement prior to engaging  
84 in an arbitration under this section.

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

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

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